

## **BOROUGH OF MIDLAND PARK – ZONING BOARD OF ADJUSTMENT MINUTES**

**September 13, 2023**

### PLEASE TAKE NOTE:

ON WEDNESDAY, SEPTEMBER 13, 2023, THE ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF MIDLAND PARK HELD A REGULAR MEETING IN THE MIDLAND PARK COUNCIL CHAMBERS, 280 GODWIN AVE., MIDLAND PARK, NJ. THE FORMAL MEETING BEGAN AT 7:30 P.M

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### FORMAL MEETING

READING OF THE OPEN PUBLIC MEETINGS ACT

PLEDGE OF ALLEGIANCE

ROLL CALL:

Mr. Les Andersen	present	Mr. Mark Divak	excused
Mr. David Zuidema	absent (arrived at 7:38 PM)	Mr. William Placier	present
Mr. Richard Formicola	present	Mr. David Barlow	excused
Mr. Nick Papapietro	present	Mr. Joseph Eliya, Alt #1	present
		Mr. James Capalbo, Alt #2	present

Attendance by Board Professionals: R. Wostbrock, Engineer; D. Novak, Planner;  
Also Present: Linda Herlihy, Esq.

Motion to appoint Linda Herlihy, Esq. of Riker Danzig, LLP as Board Attorney and approve the associated contract and resolution made by Mr. Papapietro. Seconded by Mr. Placier; all voted in favor. Atty. Herlihy confirmed she has been briefed on all current matters before the Board.

Minutes of the 8/9/23 meeting – An error was noted in the transcript that showed Mr. Yakimik as the Board Engineer and Mr. Wostbrock as the Traffic Expert. Correction to be made by Board Secretary. Motion to approve the minutes as amended made by Mr. Placier. Seconded by Mr. Capalbo; all voted in favor.

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### PUBLIC HEARINGS

**Baumann, Ryan & Valerie – 217 Paterson Avenue – BL 26.01 LT 13** – Atty. Bruce Rosenberg of Winne Banta on behalf of the applicant. The application is for a 120 SF, second-story dormer over an existing porch. A variance is needed because a 25' setback is required and 23' proposed; this plan will have no impact on the neighbors with regards to light, air, and open space, and is consistent with the neighborhood.

Mr. Zuidema arrived at 7:38 PM. Notices are in order.

**Cesar Padilla, Architect** – sworn in and accepted as expert. Mr. Padilla prepared the plans that were submitted with the application. The property is narrow but deep, which is typical for the street and measures 50' x 166'. The front yard setback for the existing porch is 23'. The proposed addition is an add-a-level on top of the porch for a bedroom that will be 8' x 15'. Mr. Padilla presented photos he took showing the property and neighboring properties. **Exhibit A1** – photo showing the property and the house to the left which has an enclosed, covered porch and a rear addition. **Exhibit A2** – photo showing the subject property and the home to the left. **Exhibit A3** – photo showing the existing porch, and the alignment with the neighbor showing they are in line. **Exhibit A4** – photo showing several homes across the street with setbacks estimated to be 10' or less. **Exhibit A5** – photo showing a home around the corner with a porch that has an add-a-level. Mr. Padilla feels the proposed dormer would be aesthetically and architecturally consistent with the existing home and the neighborhood, and it is a modest addition that the porch will be able to hold.

The Board clarified that the addition will not extend beyond the porch; per Mr. Padilla, they are not changing the footprint at all, it will not extend beyond the porch. Mr. Papapietro asked if the porch was to remain open; Mr. Rosenberg confirmed it will and that the applicant is agreeable to a condition that it would remain open. Mr. Wostbrock questioned the bulk table as portions were blank on the plan, specifically for building

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coverage and improved lot coverage. Per Mr. Wostbrock, there is also a side yard variance needed as 6' is required and 5.3' exists, which is an existing non-conformance. Mr. Padilla reviewed the following: the front yard setback will remain 23', so a 2' variance is needed; building coverage is 20.7%; improved coverage is 43.3%, with a breakdown to be provided to Mr. Wostbrock.

Meeting opened to the public for questions of Mr. Padilla.

Frank Kalata – sworn in. Mr. Kalata noticed the plan was from 2016 and shows a different driveway than what is there which is a concern regarding lot coverage since he is the next-door neighbor and gets basement seepage. Mr. Padilla advised that the roof footprint and downspout locations aren't changing so there should be no increase in water.

Meeting closed to the public.

Meeting opened to the public for comments, with none, meeting closed to the public.

Mr. Papapietro questioned the survey. Atty. Herlihy advised that Mr. Berninger will have them submit an updated survey reflecting existing conditions as part of the building permit process.

**Ryan Baumann, owner** – sworn in. Mr. Baumann confirms that when they did the alterations to the driveway in approximately 2019, they only decreased it in the rear of the home.

The Board reviewed the variances and applicant is seeking and the conditions discussed: a 2' variance for front yard setback - 25' required, 23' existing, 23' proposed; a 0.7' side yard setback – 6' required, 5.3' existing; and a condition that the front porch is not to be enclosed. Motion to approve the application made by Mr. Formicola. Seconded by Mr. Capalbo; all voted in favor.

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**Jag-Tech LLC dba Midland Park Food Mart – 184 Godwin Avenue – BL 17 LT 9.01** – Applicant requested to carry to the October 11, 2023, meeting.

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**MHF Midland Park LLC/Taco Bell – 80 Godwin Avenue – BL 6 LT 17.02** – see attached transcript

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## **COMMUNICATIONS:**

2024 Meeting Dates – no issues reported with tentative meeting dates.

289 Godwin Avenue – BL 21 LT 13 – Mark Berninger Memo – Board discussed the parking issue around the address, several Members report the parking is awful and they have seen more patrons there than is supposed to be and there is a safety concern. Per Mr. Andersen, it would be up to the Mayor & Council and Police Department to make it a "No Parking" zone.

72 Lake Avenue, LLC – 72 Lake Avenue – BL 3 LT 2 – Bergen County Planning Conditional Approval Letter and Joint Report – Information, not action taken. Per Mr. Wostbrock, they still have not addressed the Board's comments but they are in the process of changing engineers.

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## **RESOLUTIONS:**

Granted Variances for 2022 – The Board discussed an ongoing problem with enforcement, especially of conditions of approval to make sure that whatever stipulations are made are being followed, who is responsible for checking on conditions of approvals, what the options are for enforcement and should there be a violation or fine for not following conditions of approval. Motion to approve the Annual Report for 2022 made by Mr. Papapietro. Seconded by Mr. Formicola; all voted in favor.

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Meeting Adjourned – 10:09 PM  
Jessica Harmon

1 BOROUGH OF MIDLAND PARK  
2 ZONING BOARD OF ADJUSTMENT  
3 WEDNESDAY, SEPTEMBER 13, 2023  
4 7:30 P.M.  
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1 LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.  
2 CERTIFIED COURT REPORTERS  
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2 201-641-1812

I N D E X		
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Mr. Placier		85
Mr. Eliya		87
Mr. Novak		
Ms. Herlihy		

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1 A L S O P R E S E N T :  
2 JESSICA HARMON, Board Secretary  
3 DAVID NOVAK, P.P., Board Planner  
4 RICHARD WOSTBROCK, P.E., Special Traffic Engineer  
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1 CHAIRMAN ANDERSON: Mr. Whitaker, do  
2 you want to enter your appearance?  
3 MR. WHITAKER: Yes.  
4 Good evening, Mr. Chairman, Members of  
5 the Board, Bruce Whitaker from the firm McDonnell &  
6 Whitaker representing the applicant, MHF Midland  
7 Park, LLC, trading and doing business as Taco Bell  
8 for 86 Godwin Avenue in Midland Park.  
9 We had concluded our direct  
10 presentation at the last meeting, and on the basis of  
11 that, rested with the understanding that we have the  
12 ability to do a rebuttal, and we would have the  
13 ability to make a summation when the hearing and all  
14 public comment has been made.  
15 So I believe this evening it will be up  
16 to Counsel to come forward with their presentation,  
17 and members of the public to ask questions of them,  
18 or make comments. So that's where we are at.  
19 My idea and goal is, if that gets  
20 concluded tonight, summations would be at the next  
21 meeting.  
22 We would have Mr. Siss back for that  
23 purpose, so it works out well.  
24 CHAIRMAN ANDERSON: Perhaps.  
25 Linda may be here anyway. You'll have

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1 nothing to worry about.  
 2 But, did you want to --  
 3 MS. HERLIHY: We'll arm wrestle.  
 4 MR. WHITAKER: You'll arm wrestle.  
 5 CHAIRMAN ANDERSON: What we're saying  
 6 is we're not going to vote tonight.  
 7 MR. GILSON: That's his prerogative.  
 8 CHAIRMAN ANDERSON: I just want to make  
 9 sure you understand what he's saying.  
 10 MR. WHITAKER: I do want to comment.  
 11 It's nice to see the two chairs  
 12 switched there.  
 13 Counsel?  
 14 CHAIRMAN ANDERSON: Mr. Gilson, do you  
 15 want to enter your appearance?  
 16 MR. GILSON: Yes, Mr. Chairman.  
 17 Matthew Gilson from the Weiner Law Group of behalf of  
 18 Burger Barn, LLC.  
 19 I'll have one witness tonight, our  
 20 planner, Ms. Donna Holmqvist. And I would call her  
 21 to testify, if that is the pleasure of the board.  
 22 MS. HOLMQVIST: Mr. Chairman, I'm going  
 23 to have three exhibits on these boards. I don't know  
 24 where you would prefer the easel. I know the  
 25 applicant did it over there.

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1 follows:  
 2 MS. HERLIHY: Thank you.  
 3 VOIR DIRE EXAMINATION  
 4 BY MR. GILSON:  
 5 Q. Ms. Holmqvist, can you please give the  
 6 board the benefit of your experience?  
 7 A. Sure.  
 8 Donna Holmqvist, spelled  
 9 H-O-L-M-Q-V-I-S-T.  
 10 I'm the CEO and founder of Preferred  
 11 Planning Group.  
 12 My business address is 110 Chestnut  
 13 Ridge Road, Suite 192, Montvale, New Jersey.  
 14 In terms of my education, Bachelor's  
 15 degree from Rutgers University, American Studies with  
 16 Urban Planning; Master of Urban Planning from New  
 17 York University.  
 18 Licensed as a Professional Planner in  
 19 the State of New Jersey since 1990.  
 20 Also a member of the American Institute  
 21 of Certified Planners since that time.  
 22 I'm a member of the New Jersey Planning  
 23 Officials Board of Planning Advisors.  
 24 There's only 12 planners in the State  
 25 of New Jersey nominated for that. I'm one of them.

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1 Is that the best way?  
 2 CHAIRMAN ANDERSON: Usually we put them  
 3 over there (indicating).  
 4 And if it's at all possible, if you  
 5 could position them so that the board and the public  
 6 can see them?  
 7 MS. HOLMQVIST: Okay. So is that good  
 8 for everybody and the board?  
 9 Yes?  
 10 Shall I -- no.  
 11 VICE CHAIRMAN PAPAPIETRO: That's good.  
 12 CHAIRMAN ANDERSON: Yeah, that's...  
 13 MS. HOLMQVIST: All right.  
 14 MR. GILSON: Yes.  
 15 Would you like to swear her first, or  
 16 qualify her first?  
 17 MS. HERLIHY: We will swear her in  
 18 first.  
 19 Do you swear that the testimony you're  
 20 about to give will be the truth, the whole truth, and  
 21 nothing but the truth?  
 22 MS. HOLMQVIST: Yes, I do.  
 23 D O N N A H O L M Q V I S T, PP,  
 24 110 Chestnut Ridge Road, Suite 192, Montvale, New  
 25 Jersey, having been duly sworn, testifies as

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1 I speak regularly in Atlantic City. My  
 2 topic this year at the League of Municipalities is  
 3 sober living.  
 4 I've spoken every year since I founded  
 5 my firm in 2018.  
 6 I serve as the consulting planner for  
 7 the Borough of Riverdale in Morris County.  
 8 I just finished a Master Plan  
 9 Re-Examination for them.  
 10 I'm also the conflict planner in  
 11 Fairfield Township, Essex County.  
 12 I've consulted for Livingston Township,  
 13 also in Essex County.  
 14 And I do work on behalf of private  
 15 clients all over the state.  
 16 I've been qualified before your  
 17 planning board for the Ohana Dental. We did a  
 18 parking variance for them, I guess, in the last few  
 19 months.  
 20 But I've testified in over 100  
 21 communities, thousands of times.  
 22 Some of my repeat clients, big names  
 23 you may know: P. F. Chang, Floor & Decor, Trader  
 24 Joe's.  
 25 And I also represent a variety of

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1 institutional uses, cannabis uses. And some of my  
 2 work is opposition.  
 3 MR. GILSON: Mr. Chairman, I'd ask that  
 4 the board accept Ms. Holmqvist's credentials.  
 5 CHAIRMAN ANDERSON: Your --  
 6 MR. GILSON: License is in good  
 7 standing.  
 8 CHAIRMAN ANDERSON: Your license is  
 9 currently in good standing.  
 10 MS. HOLMQVIST: Oh, absolutely, yeah.  
 11 CHAIRMAN ANDERSON: Anybody --  
 12 Mr. Whitaker, do you have anything?  
 13 MR. WHITAKER: No objection.  
 14 CHAIRMAN ANDERSON: Anyone on the board  
 15 have any questions regarding -- no?  
 16 All right. So she's accepted as an  
 17 expert in the field of municipal planning.  
 18 MR. GILSON: Thank you, Mr. Chairman.  
 19 DIRECT EXAMINATION  
 20 BY MR. GILSON:  
 21 Q. Ms. Holmqvist, you were retained by my  
 22 client to prepare a planning overview of this site,  
 23 and study?  
 24 A. Yes, that's correct.  
 25 Q. Can you please give the board the  
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1 results of your findings?  
 2 A. All right.  
 3 So we looked at the site plan,  
 4 architectural and site plan that's been filed with  
 5 the board, all the municipal reports.  
 6 We looked at your 2019 Master Plan  
 7 Re-examination.  
 8 We also evaluated the ordinance that  
 9 banned drive-through restaurants in the B-1 and B-3  
 10 districts.  
 11 We did a survey of existing land uses  
 12 in the study area. Hence my exhibits, which I'll get  
 13 to in a second.  
 14 And we're going to provide you with  
 15 facts and conclusions that, hopefully, you will see  
 16 fit to deny the application for failure to meet the  
 17 statutory proofs for a D-1 use variance.  
 18 I'm just going to go right into my  
 19 presentation, if I may?  
 20 CHAIRMAN ANDERSON: Please.  
 21 MS. HERLIHY: Why don't we mark all  
 22 your exhibits, this way we won't have to interrupt  
 23 you.  
 24 MR. GILSON: I believe we're on O-2.  
 25 MS. HOLMQVIST: Okay.

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1 So I'll just give you the title and the  
 2 figure? That's what you want.  
 3 And should I...  
 4 MS. HERLIHY: Yes, please.  
 5 The title and the date.  
 6 MS. HOLMQVIST: And you want me to mark  
 7 the big ones, right?  
 8 Yeah, okay.  
 9 Okay. So this one is Figure 1. It's  
 10 entitled "Land Use."  
 11 It's prepared by my firm. Is this O?  
 12 MR. GILSON: O-2.  
 13 MS. HOLMQVIST: O-2.  
 14 MS. HERLIHY: Is it dated or undated?  
 15 MR. GILSON: Dated 5-1-23.  
 16 MS. HERLIHY: Thank you.  
 17 (Whereupon, Figure 1, Land Use,  
 18 Prepared by Donna Holmqvist, P.P., Dated  
 19 May 1, 2023 is marked as Exhibit O-2 for  
 20 identification.)  
 21 MS. HOLMQVIST: The next one I'm going  
 22 to be referring to is Figure 2, Zoning.  
 23 That's 5-1-23.  
 24 That's O-3?  
 25 MR. GILSON: Yes.

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1 (Whereupon, Figure 2, Zoning, Prepared  
 2 by Donna Holmqvist, P.P., Dated May 1, 2023,  
 3 is marked as Exhibit O-3 for identification.)  
 4 MS. HOLMQVIST: This one is entitled --  
 5 it's Figure 3, Adverse Impacts, 5-1-23.  
 6 MR. GILSON: O-4.  
 7 MS. HOLMQVIST: O-4.  
 8 (Whereupon, Figure 3, Adverse Impacts,  
 9 Prepared by Donna Holmqvist, P.P., Dated  
 10 May 1, 2023 is marked as Exhibit O-4 for  
 11 identification.)  
 12 MS. HOLMQVIST: And I have a screenshot  
 13 of GoogleEarth that I'm going to be talking about.  
 14 Mark that O-5.  
 15 (Whereupon, GoogleEarth Street View, is  
 16 marked as Exhibit O-5 for identification.)  
 17 MS. HOLMQVIST: I know the board is  
 18 familiar with the site, but we've outlined it in  
 19 white (indicating).  
 20 We used, as our base map, an image from  
 21 Nearmap. It's a service we subscribe to. The date  
 22 of the aerial imagery is March 21st, 2023.  
 23 You can see we've color-coded the land  
 24 uses very distinctly in red and yellow. Obviously  
 25 the Godwin Avenue corridor is all commercial, shown

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1 in red (indicating).

2 And the yellow to the north is the  
3 residential development primarily along Rea Avenue  
4 abutting -- abutting the site.

5 As you know, the property is  
6 three-and-a-half acres. It contains a CVS with a  
7 pharmacy drive-through, some other commercial uses,  
8 distinct buildings on the site.

9 And then we have what is the subject of  
10 this application, the vacant -- vacant bank building  
11 proposed for the Taco Bell drive-through.

12 On the opposite side of Godwin Avenue  
13 is an 8-and-a-half-acre property with the Midland  
14 Park Shopping Center. There's a Kings Supermarket,  
15 some other strip commercial-type uses, a Bubbakoo's,  
16 some medical-related uses and so forth. Also  
17 multiple buildings on that property.

18 Farther to the east, we have an office  
19 building at the corner opposite the Taco Bell site.

20 And then we have some fast-food  
21 restaurants and some other business uses on the south  
22 side of Godwin east of the Midland Park Shopping  
23 Center.

24 I'm shifting to the Zoning exhibit,  
25 O-3. The zoning boundaries are also shown in yellow

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1 drive-through. That's an accessory structure in the  
2 front yard requiring a variance, creating somewhat of  
3 a visual eyesore, in my professional opinion on that,  
4 and would not be there if it weren't for the  
5 drive-through feature of this restaurant.

6 The westerly building façade has some  
7 signage proposed. It has some murals as well.

8 But I believe there's a bell logo and  
9 also the Taco Bell name. And while the applicant has  
10 testified that that signage in combination complies  
11 with the total amount of signage, they've conceded it  
12 is not permitted because it doesn't face a parking  
13 lot or a street.

14 And that would be on the westerly  
15 façade of the building. The applicant testified that  
16 all the other signage is in conformance.

17 The one thing that I didn't really hear  
18 from the applicant or the borough, the borough's  
19 experts, had to do with the menu board.

20 And the menu board is proposed right  
21 around the south/southeast corner by the loop, if you  
22 will, of the drive-through lane.

23 My reading of the ordinance is that  
24 this is not permitted. The ordinance talks about  
25 advertising a business, the premises, an item, not

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1 and red (indicating).

2 Again, commercial B-3 in the red and  
3 the R-1 to the north of the site, the residential  
4 zone district.

5 The proposed Taco Bell restaurant is  
6 permitted. A drive-through restaurant is not  
7 permitted in the zone. That's by Ordinance 19-21 --  
8 very clearly and distinctly prohibits drive-through  
9 restaurant use in those two zones.

10 The applicant is also seeking  
11 C variances, which were enumerated in the various  
12 reports. I'm just going to highlight them so the  
13 board remembers. You have a lot of information  
14 coming at you over the hearings.

15 The impervious coverage is excessive on  
16 the site. The applicant is reducing that exceedance  
17 very slightly. It still requires a variance.  
18 They're are about 11,000 square feet over the  
19 required impervious coverage. And that is the site  
20 in totality.

21 But of course they're constructing the  
22 drive-through lane, which is contributing to that.

23 There has also been cited an accessory  
24 structure in the front yard. That's the height  
25 clearance structure that is required for the

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1 every item for sale on premises.

2 The other notable feature --

3 CHAIRMAN ANDERSON: Can I just  
4 interrupt for a minute? What ordinance are you  
5 referencing?

6 MS. HOLMQVIST: Your sign ordinance,  
7 Mr. Chairman.

8 CHAIRMAN ANDERSON: Sign ordinance.

9 MS. HOLMQVIST: Yeah.

10 Section 34-17.8B, the sign ordinance  
11 that pertains to this property.

12 Another notable feature which could not  
13 possibly be envisioned as permitted with this sign is  
14 that the sign talks. Right?

15 You make an order at the menu board,  
16 and the person may talk back to you. Right?

17 So there's this dialogue going on. Not  
18 typical with a traditional freestanding sign for a  
19 business just highlighting the location, or maybe the  
20 address of the business, or just advertising maybe  
21 one item like coffee or, you know, something to that  
22 effect.

23 We don't expect freestanding signs  
24 designated in your ordinance to be talking and making  
25 noise.

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1 So our position -- of course, you know,  
2 we welcome the weigh-in of your consultants, right,  
3 the borough's consultants -- but we don't believe  
4 that that menu board is permitted. Okay?

5 And there really has been no mention of  
6 that.

7 I also did not see a detail of that  
8 sign in the plans that I reviewed.

9 So maybe, you know, at some point we'll  
10 be shown that detail. So we believe that's another  
11 variance that maybe nobody was aware of.

12 The applicant has testified that  
13 they're not putting any EV parking. And I guess the  
14 borough is agreeable to that. But there is an  
15 ordinance on your books about that.

16 I want to just show you, while I'm  
17 talking about these other variances -- and I spoke of  
18 that west façade variance, right, where it doesn't  
19 face -- the signage, where it doesn't face the street  
20 and it doesn't face a parking lot, but the applicant  
21 wants to locate signage on the west façade. So that  
22 signage would be facing eastbound traffic and  
23 pedestrians, I suppose.

24 But people traveling eastbound on  
25 Godwin are what the applicant's planner testified to

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1 A. Well, that, I don't know.

2 But it's obviously that...

3 Q. October of 2021.

4 A. Okay. Thank you.

5 Q. For the record.

6 A. Okay.

7 To me it doesn't look any different.

8 And what I think is so notable -- I hope everyone  
9 recognizes the bank building with the drive-through  
10 canopy.

11 CHAIRMAN ANDERSON: I'm sorry. Can I  
12 interrupt?

13 Could you just go back just a little  
14 bit? Because I missed what you were talking about  
15 while I was looking at the photo.

16 MS. HOLMQVIST: Sure.

17 Go back?

18 MS. HERLIHY: I think they were  
19 discussing the date, trying to figure out what the  
20 date is.

21 CHAIRMAN ANDERSON: Oh, okay.

22 MS. HOLMQVIST: I'm talking about the  
23 signage that is proposed on the westerly façade.

24 CHAIRMAN ANDERSON: Right. Okay.

25 MS. HOLMQVIST: And that what we

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1 as the ones that we need that sign for.

2 And so that's why -- and I have looked  
3 at it myself, right.

4 But for the board, we have the Google  
5 view, the Google Street View.

6 Q. Do you have the date on which that was,  
7 the Google Street View?

8 A. Yeah.

9 It's right down -- I'm sorry.

10 May I pass to you? Right down on the  
11 right-hand corner from the screenshot on my computer.  
12 I believe it says "September 12th." And so that's  
13 when we snapped that from online.

14 Q. No.

15 I'm asking what was --

16 CHAIRMAN ANDERSON: This is O-5.

17 MS. HOLMQVIST: One of them was marked.

18 Yeah.

19 This gentleman has the marked one,  
20 yeah.

21 BY MR. GILSON:

22 Q. I'm actually asking when the -- when  
23 that was the street view. I know the conditions  
24 haven't changed. I'd just like the record to note  
25 that that's the date of the street view.

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1 captured for you in this Google-Street-View Image.

2 We're looking at the west façade of the bank.

3 CHAIRMAN ANDERSON: Yes. The bank's  
4 sign.

5 MS. HOLMQVIST: The building.

6 CHAIRMAN ANDERSON: Right.

7 MS. HOLMQVIST: The bank building,  
8 which is entirely visible from the street.

9 I don't think there's any question  
10 about it.

11 So the testimony of the applicant's  
12 planner -- and this is reflected in the transcript.  
13 The applicant's planner testified that the close  
14 setback of other buildings on the same side of Godwin  
15 Avenue that are located to the east, block the view  
16 of the proposed building.

17 The proposed Taco Bell is going to be  
18 about equivalent with where the canopy is. It's  
19 entirely visible.

20 So I don't know -- you know, no  
21 rendering was provided by the applicant to support  
22 that conclusion.

23 And when I look at this picture, I  
24 do not arrive at the same conclusion as the  
25 applicant's planner.

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1 So I think that's important for you to  
 2 consider when you're weighing the various  
 3 C variances, including the signage variance. I do  
 4 not think it's needed for visibility.  
 5 Looking at O-4 entitled "Adverse  
 6 Impacts," what we did here was we took the site plan  
 7 and we superimposed it to scale on the same Nearmap  
 8 aerial that you've been looking at on the other  
 9 exhibits.

10 So that would be superimposed over the  
 11 March -- March 21st, 2023 Nearmap aerial.

12 And this is an exact duplication of the  
 13 applicant's site plan as submitted.

14 So you can see we colored in green some  
 15 of the landscape area, I'll call it (indicating).

16 We're highlighting in yellow here  
 17 (indicating) where they have their refuse area.

18 You remember it used to be over here  
 19 (indicating) someplace near Rea, and then they moved  
 20 it to the other side of the cell tower.

21 This area in gray is the cell tower  
 22 (indicating).

23 VICE CHAIRMAN PAPAPIETRO: Could you  
 24 step back one step, please?

25 Thank you.

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1 granting a use variance which is subject to the  
 2 enhanced standards of Medici and that you have an  
 3 ordinance specifically prohibiting this use. Okay.

4 So I'm just going to summarize what  
 5 we've replicated here visually.

6 This plan is contrary to the Master  
 7 Plan goals of the community, entirely contrary to it.  
 8 The borough has decided that a drive-through  
 9 restaurant in this zone is an incompatible use. It  
 10 is not a permitted use. It's not omitted from the  
 11 ordinance. It's specifically banned in this zone.

12 To me that's very different than  
 13 something that's just not mentioned. Okay?

14 Your Master Plan is from 2019. And  
 15 this ordinance is also from 2019. So they're both  
 16 very recent.

17 The way the building is planned, we  
 18 have no orientation of the building to Godwin Avenue.

19 When you look up and down Godwin  
 20 Avenue, you see landscaping. You see restaurants on  
 21 the other side of the road that have front doors  
 22 facing Godwin. They have spacious landscaped areas,  
 23 street trees.

24 We don't have any of that here. We  
 25 have a building where the entire back of the

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1 MR. FORMICOLA: Or if you tilt it just  
 2 a little bit over this way.

3 Sorry. Can you see?

4 VICE CHAIRMAN PAPAPIETRO: Yeah, I can  
 5 see. You were just, kind of, blocking that as you  
 6 were going.

7 It's good.

8 MS. HOLMQVIST: So here we have the  
 9 cell tower in gray (indicating).

10 I'm pointing now to the loading area  
 11 that is labeled here (indicating) "Loading Area and  
 12 Circulation Aisle." We all heard a lot of testimony  
 13 on that from Mr. Dean.

14 We have the building here (indicating),  
 15 the Taco Bell restaurant building, shaded in brown.

16 These blue rectangles (indicating) are  
 17 the vehicles in the queue that are shown and  
 18 designated on the site plan that Mr. Dean testified  
 19 to.

20 Around the corner is where that menu  
 21 board is going to be.

22 And I'm going to just, kind of,  
 23 highlight for you what I think are the distinct  
 24 deficiencies, adverse impacts, shortcomings, things  
 25 that should make this board think twice about

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1 building, with no pedestrian doorway, is what is  
 2 facing Godwin. And that is purely -- purely driven  
 3 by having a drive-through at this location.

4 In terms of safety and traffic flow,  
 5 the applicant's experts told you repeatedly, oh, it's  
 6 better because we're getting rid of the bank driveway  
 7 that used to empty out onto Godwin. That's safer for  
 8 the pedestrians. That's a win-win. We're giving you  
 9 something better.

10 This has a lot of issues as well that  
 11 they, kind of, glossed over, okay. No bypass lane.  
 12 No bypass lane. Single lane drive-throughs are not  
 13 desirable, for the obvious reasons, that no one can  
 14 get out of the line if there's a delay. If there's  
 15 some kind of emergency, somebody can't leave.

16 But here we have a single-lane  
 17 drive-through, creating potential issues that really  
 18 you were told it's not a problem; it won't be a  
 19 problem.

20 We also have the handicapped parking  
 21 space right where I'm pointing to at the north end of  
 22 the building right in front of the -- I'll call it  
 23 back door, okay. They call it front door, I guess,  
 24 but it's really the back door. We have the handicap  
 25 space right there (indicating).

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1 And just look at the issues that we're  
2 showing here. Look at where -- if this loading space  
3 is filled, what is the visibility? Now, you were  
4 told, oh, it's not going to be an issue because we're  
5 going to do this off hours, I think very early in the  
6 morning. I heard board members a bit skeptical about  
7 that. I, myself, am skeptical about it. I think  
8 when you see this enlarged and in color, it becomes  
9 really obvious, the situation or the potential  
10 situation that is being created here.

11 The other issues with having the  
12 drive-through loop around so close to the sidewalk,  
13 they have a gap in their shrubs. They're really not  
14 proposing a comprehensive landscape plan along Godwin  
15 because they don't have room.

16 So it's really just low-lying shrubs  
17 and a fence separated. There's a gap because we  
18 can't even close those features because of the  
19 proximity of the right-of-way and the lack of  
20 green space just right -- right at the -- the loop  
21 area.

22 What kind of impact do you think it's  
23 going to have on anyone walking?

24 We see a crosswalk here (indicating),  
25 right? Obviously people walk. They're going to the

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1 the sidewalk. We're going to have vehicles queued  
2 here (indicating). We're going to have the noise and  
3 the lighting effects of this illuminated menu board,  
4 which I would assume, since it's listing every item  
5 on the menu, is going to be quite large.

6 We're also in close proximity to the  
7 intersection here of Rea and Godwin (indicating).  
8 Mr. Dean showed you drone footage for one period on a  
9 Wednesday. I believe it was April 12th. And he  
10 focused his drone on businesses across the street,  
11 the Burger King and the Wendy's, I believe. And he  
12 did it on a Wednesday. And he did it for a very  
13 limited time period.

14 So why -- in his testimony he talked  
15 about he's done 50 or 60 Taco Bells in his career.  
16 Kudos to him, right. He's the Taco Bell expert.

17 But he didn't produce any drone footage  
18 for this corridor of existing Taco Bells so that you  
19 could see, like, what a speedy operation this is.

20 Instead he used something I consider  
21 totally irrelevant, because they're not Taco Bells  
22 across the street, so their menus are different. The  
23 characteristics of their clientele is probably a  
24 little different. So what relevance did that drone  
25 footage have?

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1 shopping center across the street. Maybe they're  
2 going to CVS, what-have-you.

3 What kind of impact do you think this  
4 continuous queue is going to have?

5 And I believe the testimony was that  
6 Taco Bell drive-throughs are open 24/7. I think  
7 that's what I heard.

8 MR. WHITAKER: Objection.

9 There's no basis or foundation for the  
10 statement she just made so I want it retracted from  
11 the record.

12 She's now testifying to something that  
13 was not testified to.

14 It's going way beyond the scope of what  
15 was testified to.

16 MS. HOLMQVIST: Okay.

17 I thought there was testimony about the  
18 signage and the hours of illumination and that it was  
19 going to go past, like, 11 o'clock or whatever your  
20 ordinance.

21 CHAIRMAN ANDERSON: There was testimony  
22 to that, not what you were saying.

23 MR. WHITAKER: Not even close.

24 MS. HOLMQVIST: Okay.

25 So we have no pedestrian entrance to

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1 And he jumped from that to tell you  
2 that the queue you saw there is what you're going to  
3 see here.

4 I think that's too much of a jump. I  
5 don't think there's a supporting foundation for that,  
6 based on the record.

7 So I just point that out to you.

8 He also -- he generated the trips,  
9 compared it to the bank.

10 But a board member asked, well, where  
11 are these cars going to come from? What direction  
12 are they coming from? There was no information. And  
13 there was no information because the traffic counts  
14 had not been done.

15 And so there was no origin and  
16 destination pattern set up to tell you where the  
17 traffic was going to come from and leave to.

18 So you have no idea what is going to  
19 happen at that intersection, because they didn't tell  
20 you. The applicant didn't produce an analysis of  
21 impacts and did not give you the information to  
22 discern for yourself what the impacts are.

23 Turning back to your Master Plan, 2019,  
24 there are three specific goals that this application  
25 is completely contrary to, okay.

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1 Goal Number 1:  
 2 "Preclude incompatible nonresidential  
 3 land uses. Preserve and protect residential  
 4 character."  
 5 I showed you on my other exhibits the  
 6 residential nature on Rea Avenue. I think you're all  
 7 familiar with the neighborhood and what is your  
 8 borough land use pattern.  
 9 The drive-through is an intense use in  
 10 this area. Maybe that's why the governing body saw  
 11 fit to address it by saying we don't want those in  
 12 the B-3 District.  
 13 There was a lot of talk about, oh, we  
 14 don't know why they did it. It doesn't matter why  
 15 they did it. They did it. They did it and they were  
 16 really clear about where it's not permitted anymore.  
 17 I don't think the menu board is  
 18 conducive to the entryway, the gateway, if you will,  
 19 to a residential neighborhood.  
 20 If I were a resident on that street, I  
 21 would be very concerned about the visual effect and  
 22 the noise effect every time I have to drive home and  
 23 I have to look at that and hear that.  
 24 Goal Number 6:  
 25 "Enhance the Godwin Avenue Commercial  
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1 districts.  
 2 So I think that's why it's reiterated  
 3 through and through the Master Plan that we need to  
 4 be conscious of the impacts.  
 5 As far as traffic flow, again I  
 6 highlight for you the loading area, which is there  
 7 because it didn't fit anywhere else.  
 8 But the code requires a loading area to  
 9 be provided.  
 10 Also, as I said before, the ADA, I  
 11 think it's obvious if this loading space is occupied,  
 12 there's going to be real difficulty with visibility  
 13 pulling out of that spot.  
 14 Turning to the statutory criteria. A  
 15 D-1 use variance is the heaviest lift for a planner  
 16 in the State of New Jersey. Okay.  
 17 And it's because of Medici and it's  
 18 because of the standards of proof. And I think this  
 19 failed totally.  
 20 What I took away from the applicant's  
 21 planner testimony was it has to do with the lot area.  
 22 They did this whole rendition of lots. They pulled  
 23 in lots from the B-1, not just the B-3.  
 24 And then they said something to the  
 25 effect of, well, we have three-and-a-half acres.  
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1 Center principal orientation toward the street  
 2 conforming to the streetscape plan."  
 3 We don't have any orientation of this  
 4 building to Godwin Avenue. In fact, we have the  
 5 total back. The only thing that's oriented is the  
 6 traffic flow for the drive-through.  
 7 Now, when I read a goal like what I  
 8 just read to you, Goal Number 6, I don't think about  
 9 drive-throughs all over the B-3. I think quite the  
 10 opposite. We want to create an environment that's  
 11 conducive to pedestrians, encourage people to be on  
 12 foot as they frequent the commercial district of the  
 13 borough.  
 14 And this flies right in the face of  
 15 that, completely incompatible with that goal.  
 16 Goal Number 10:  
 17 "Improve safety and minimize traffic  
 18 impacts, improve traffic flow, and preserve  
 19 residential neighborhoods."  
 20 That's a real theme in the Master Plan,  
 21 is concern about the impact of other uses on the  
 22 residential neighborhoods. And when you look at the  
 23 zoning map of your borough, you can well understand  
 24 why. Because most of it is residential, and these  
 25 residential neighborhoods about your commercial  
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1 And, oh, the applicant planner -- well, he referred  
 2 to this area where the Taco Bell is as the finger,  
 3 okay?  
 4 I don't know that I would call it the  
 5 finger, but I'm going to be consistent with his  
 6 testimony and that's what I'm going to refer to it  
 7 as.  
 8 I would call it an appendage, but he  
 9 called it the finger and said, well, that's why this  
 10 is so appropriate. Look how well it fits in.  
 11 I say just the opposite. Look how it's  
 12 shoehorned in. And there's an existing building  
 13 there that they're demolishing. It's not like  
 14 there's nothing there and we're starting with a blank  
 15 slate. We're demolishing the existing building.  
 16 We're constructing a new building. We're putting a  
 17 drive-through, which the governing body has been  
 18 really clear, no -- no good for the borough. And  
 19 look how crowded.  
 20 I mean, it's so obvious. So obvious.  
 21 So the special reasons in this case  
 22 that you need to evaluate are what is so unique about  
 23 this property that makes this use so particularly  
 24 suited right there? Right there (indicating).  
 25 What is so incredibly unique about  
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1 that, when we're demolishing the building that's  
2 there, when the governing body said, no, and we're  
3 shoehorning it in? You can't even get a bypass lane  
4 in there.

5 So I don't think there's anything  
6 uniquely suited about this property for this use. I  
7 think it's quite the opposite.

8 The applicant's planner testified about  
9 the purposes of planning per the Municipal Land Use  
10 Law. I'm going to highlight for you out of  
11 Section 40:55d-2 Municipal Land Use Law, the purposes  
12 of planning, that this is completely contrary to, as  
13 I did say, your Master Plan.

14 Subsection A talks about municipal  
15 action to guide the appropriate use of land for  
16 public health, safety and welfare. This is contrary.  
17 This proposal is contrary to your ordinance  
18 prohibitions.

19 We have a drive-through in the front  
20 yard. It's not pedestrian friendly. The building is  
21 oriented towards the back with the entrance. And we  
22 have excessive signage and a menu board, okay, that I  
23 think is a variance.

24 So I don't see how that's appropriate  
25 for the public health, safety and welfare.

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1 before are not related to the unique features of this  
2 building or this site. It's purely because they want  
3 to construct a drive-through.

4 So I would submit to you that they  
5 failed on the positive criteria for this use  
6 variance.

7 Looking at the negative criteria, no  
8 substantial detriment to the public good.

9 What I offer for your consideration on  
10 that prong of the negative criteria is that they  
11 haven't addressed the impacts on the surrounding  
12 area; hence, the trip generation, where is it coming  
13 from, where is it going to, what are we doing with  
14 left turns over here, we don't know. Okay?

15 We don't know because they didn't  
16 submit that type of analysis to you.

17 The substantial -- the second prong,  
18 substantial detriment to the intent and purpose of  
19 the zone plan and zoning ordinance, I think I  
20 enumerated quite clearly the goals in your Master  
21 Plan and how this is completely contrary.

22 I also talked about the Municipal Land  
23 Use Law purposes of planning. I find it to be very  
24 obvious. Your planning documents and your ordinance  
25 prohibiting this are very recent, so clearly it was

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1 Subsection I:

2 "Promote a desirable and visual  
3 environment."

4 I do not find a drive-through  
5 loop facing Godwin, and mere feet away from  
6 pedestrians, to be promoting a desirable visual  
7 environment.

8 Certainly the menu board that I spoke  
9 of is not contributing to the aesthetics of the  
10 Godwin Avenue corridor.

11 And then, again, we have idling cars,  
12 headlights, potential exhaust fumes, depending on how  
13 long the queue is and how delayed people are.

14 I don't think that's conducive to  
15 compliance with that section of the Land Use Law  
16 purpose of planning.

17 Denial of a drive-through for a  
18 restaurant in the B-3 does not impose a hardship on  
19 this applicant.

20 The proposed nonconforming use on  
21 this site is totally by virtue of the drive-through.  
22 They could have a restaurant there, but they want to  
23 have a drive-through. And they're demolishing the  
24 existing building to get it in there.

25 The C variances that I talked about

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1 thought about. The pedestrian environment and  
2 providing compatible uses is in multiple goals and  
3 objectives of the borough's land use plan.

4 And so having said all that and  
5 presented you with visual exhibits, we hope you deny  
6 this application.

7 BY MR. GILSON:

8 **Q.** And, Ms. Holmqvist, I have just a few  
9 questions for you. I want to make this extremely  
10 simple.

11 This site exists in substantially  
12 similar condition today as it did when this ordinance  
13 banning drive-throughs in the zone was passed,  
14 correct?

15 **A.** Yes.

16 **Q.** So the Council was completely cognizant  
17 of these conditions and chose to ban drive-throughs  
18 in this zone which included this location?

19 **A.** Correct.

20 **MR. GILSON:** Thank you.

21 I open it up to the board for questions  
22 of Ms. Holmqvist.

23 **CHAIRMAN ANDERSON:** I do have  
24 questions.

25 Maybe board members do too.

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1 But, Mr. Whitaker, did you want to do  
 2 your cross before we ask questions, or don't you  
 3 care?  
 4 MR. WHITAKER: It doesn't matter to me.  
 5 CHAIRMAN ANDERSON: Okay. I have -- I  
 6 have a few questions. And this, necessarily, isn't a  
 7 question, but I haven't, perhaps, articulated this  
 8 very clearly in the past with the other planner.  
 9 But it's -- it's not that  
 10 drive-throughs are not permitted. Drive-throughs are  
 11 permitted in this zone. What's not permitted is a  
 12 restaurant with a drive-through. Okay.  
 13 So the emphasis, both by the applicant  
 14 and by your testimony, to me has been on -- from your  
 15 point of view, the negative aspects of the  
 16 drive-through, and from the applicant's point of  
 17 view, why this site is particularly suitable for a  
 18 drive-through.  
 19 To me that's not the issue, whether  
 20 this site is particularly suitable for a  
 21 drive-through or not  
 22 While it's all well and good, the real  
 23 issue is, what are the special reasons that  
 24 demonstrate that a restaurant with a drive-through  
 25 advances the purposes of zoning at this site?

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1 If that exact same building, if we  
 2 change the name to Taco Bell Bank & Trust, they may  
 3 not -- other than the sign and C variances and the  
 4 preexisting ones, they may not even need a variance.  
 5 It would be making, essentially, a site plan.  
 6 And my complaint with the applicant's  
 7 planner was that the fact that the site is  
 8 particularly suitable for a drive-through to me --  
 9 and other board members may disagree -- is not  
 10 particularly informative.  
 11 What I need to know is, why does a  
 12 restaurant -- why is a restaurant drive-through so  
 13 particularly suited to this property as opposed to  
 14 a bank drive-through, or a hardware store  
 15 drive-through, or whatever?  
 16 Drive-throughs are permitted in this  
 17 zone. What the Mayor and Council -- what the  
 18 ordinance is, is that drive-throughs with a  
 19 restaurant are not permitted.  
 20 So I understand what you're saying, but  
 21 as part of your testimony you said, a restaurant is  
 22 permitted, but a drive-through isn't.  
 23 MS. HOLMQVIST: A drive-through  
 24 restaurant.  
 25 I'm sorry. If I didn't make that

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1 clear, that's what I meant.  
 2 CHAIRMAN ANDERSON: A drive-through  
 3 restaurant.  
 4 So, anyway, that's -- again, I'm not  
 5 sure I'm getting my point across, but a couple other  
 6 things.  
 7 The talk -- you said that the talking  
 8 sign --  
 9 MS. HOLMQVIST: The menu board. I  
 10 think I called it a talking sign, yes.  
 11 CHAIRMAN ANDERSON: Your client is  
 12 Burger King, correct?  
 13 MS. HOLMQVIST: Yes.  
 14 Burger Barn, LLC.  
 15 CHAIRMAN ANDERSON: They have a talking  
 16 sign.  
 17 MS. HOLMQVIST: But they're not -- they  
 18 didn't ask for a variance.  
 19 CHAIRMAN ANDERSON: Okay. All right.  
 20 MS. HOLMQVIST: This is totally  
 21 different.  
 22 CHAIRMAN ANDERSON: But what you're  
 23 saying -- your testimony was that it was unusual or  
 24 something to that effect?  
 25 MS. HOLMQVIST: No.

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1 Okay. So let me just make -- clarify.  
 2 I did not make myself clear. I apologize.  
 3 What I was trying to say is, if your  
 4 sign code, when it talks about a freestanding sign, I  
 5 do not believe it contemplates a menu board that is  
 6 interactive. Yeah.  
 7 CHAIRMAN ANDERSON: All right. Okay.  
 8 Just briefly, the -- no, I don't want  
 9 to get into that. Okay.  
 10 Anybody else have any questions for  
 11 this witness?  
 12 VICE CHAIRMAN PAPAPIETRO: Just a  
 13 clarification.  
 14 You made a comment about the impervious  
 15 coverage being an issue. It's currently an issue  
 16 now, right --  
 17 MS. HOLMQVIST: Yeah.  
 18 VICE CHAIRMAN PAPAPIETRO: -- with the  
 19 current structure.  
 20 MS. HOLMQVIST: Um-hmm.  
 21 VICE CHAIRMAN PAPAPIETRO: So it's not  
 22 really going to change anything with the impervious  
 23 coverage if you knock down and rebuild.  
 24 MS. HOLMQVIST: Well, they're asking  
 25 for a variance slightly less than the existing

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1 condition.

2 But I think the board should be mindful  
3 that they're demolishing the entire structure that's  
4 there and they're still asking for the variance.

5 CHAIRMAN ANDERSON: What's the  
6 significance of that?

7 MS. HOLMQVIST: They need to make the  
8 proofs to you of how that's justifiable. And we  
9 didn't hear about, well, how much of it is because we  
10 have a non-permitted use with a drive-through lane.  
11 I didn't hear anything about that.

12 CHAIRMAN ANDERSON: Anybody else?

13 MR. PLACIER: Yeah.

14 You had testified before about a runoff  
15 lane for...

16 MS. HOLMQVIST: A bypass.

17 MR. PLACIER: A pass-by lane.

18 Is that required by law?

19 MS. HOLMQVIST: No.

20 MR. GILSON: Ms. Holmqvist, in your  
21 experience as a planner, would you say it is  
22 currently the industry standard to have a bypass lane  
23 in a drive-through restaurant?

24 MR. WHITAKER: I would object unless  
25 she has a foundation basis for that. It's an opinion

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1 experience dealing with municipalities that have  
2 drive-through restaurants?

3 MS. HOLMQVIST: Yes.

4 MR. GILSON: Have you analyzed  
5 drive-through restaurants?

6 MS. HOLMQVIST: A bypass is always --

7 MR. WHITAKER: No.

8 Have you -- the question was, have you  
9 analyzed --

10 MR. GILSON: Mr. Whitaker, are you the  
11 applicant attorney or the applicant?

12 MR. WHITAKER: No.

13 She's got to answer the question that  
14 you asked.

15 CHAIRMAN ANDERSON: We're not going to  
16 get into a fight here.

17 MR. WHITAKER: It's not a fight at all.

18 I just want the record to be established that she  
19 answers the question that's been asked.

20 CHAIRMAN ANDERSON: Your objection is  
21 on the record.

22 MR. GILSON: I will re-ask my question.

23 Is It your experience as a planner that  
24 the industry standard for drive-through restaurants  
25 is to have a bypass lane?

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1 without any substantiation or foundation.

2 MR. GILSON: Ms. Holmqvist, have you  
3 had experience dealing with other drive-through  
4 restaurants?

5 MS. HOLMQVIST: I have looked at the  
6 other ones in the borough. I've looked at the  
7 Dunkin' Donuts, the Starbucks and Burger King and  
8 Wendy's.

9 MR. WHITAKER: That's not experience.  
10 That didn't answer the question.

11 MS. HOLMQVIST: It's an observation by  
12 a Professional Planner.

13 MR. GILSON: I think Ms. Holmqvist is a  
14 professional planner.

15 MR. WHITAKER: Ms. Holmqvist can be a  
16 professional planner and have no knowledge as it  
17 pertains to drive-through restaurants.

18 CHAIRMAN ANDERSON: Mr. Whitaker, your  
19 objection is on the record. We'll let her answer the  
20 question.

21 MR. WHITAKER: Well, she can't answer a  
22 question with an opinion unless she's got a  
23 foundation and basis for it. I haven't heard that  
24 yet.

25 MR. GILSON: Ms. Holmqvist, do you have

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1 MS. HOLMQVIST: Yes.

2 CHAIRMAN ANDERSON: Okay.

3 MR. GILSON: All right.

4 I reopen to the board for questions.

5 CHAIRMAN ANDERSON: Does anybody else  
6 have any questions?

7 MR. ELIYA: A question about the bypass  
8 lane.

9 So the current bank does not have a  
10 bypass. There's two lanes, but without any bypass  
11 lane.

12 How does that differ from this plan  
13 here?

14 MS. HOLMQVIST: It's a different use.

15 MR. ELIYA: It's a different use, but  
16 there's still no bypass lane.

17 MS. HOLMQVIST: That's correct.

18 But there's a lot more issues with --  
19 and a much more intensive use with a drive-through  
20 restaurant than a bank. Okay.

21 The hours are different. Usually banks  
22 are not open on Sundays. Usually they close about  
23 noon on Saturday. They're not open until 11 o'clock  
24 at night. They pretty much shut down maybe 5, 6  
25 o'clock. Okay.

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1 Very, very different intensity of  
 2 use.  
 3 MR. DIVAK: An emergency is still an  
 4 emergency.  
 5 MR. WHITAKER: Thank you.  
 6 MS. HOLMQVIST: But you're not saving  
 7 this building.  
 8 The applicant is not saving this  
 9 building. So I don't really know the relevance.  
 10 We're introducing a completely new use,  
 11 completely new construction and, in my opinion, a far  
 12 more intensive use with way more drive-through lane  
 13 activity than a bank.  
 14 People come into a bank. They do a  
 15 transaction. They're either withdrawing money,  
 16 depositing money. Maybe there's some other issue.  
 17 But for that you usually would go into  
 18 the lobby for other issues. Simple transactions,  
 19 deposits, withdrawals.  
 20 A drive-through restaurant is very  
 21 different. You have to take time to look at the menu  
 22 board. Okay. Then you have to maybe ask questions  
 23 about I want this with it, I don't want that. Can I  
 24 have ice? Can I not have ice?

25 There's lot of variations. Very, very  
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1 Wendy's.  
 2 But we had a traffic engineer testify  
 3 before you that said he did 50 or 60 Taco Bells. So  
 4 why we didn't hear anything about Taco Bell queuing  
 5 characteristics, I don't know.  
 6 MR. GILSON: Ms. Holmqvist, let me ask  
 7 you this question: When the ordinance was passed  
 8 banning drive-through restaurants in this zone, did  
 9 those other drive-through restaurants, including the  
 10 Burger King, exist?  
 11 MS. HOLMQVIST: The ones right across  
 12 the street, the Wendy's and the Burger King, yes,  
 13 they existed.  
 14 MR. GILSON: So as a planner, if you  
 15 were -- if you were to be advising, would you say  
 16 that that was -- would be considered, in drafting an  
 17 ordinance to ban further drive-through restaurants,  
 18 the proliferation of current drive-through  
 19 restaurants existing?  
 20 MR. WHITAKER: Objection.  
 21 MS. HERLIHY: I'm sorry.  
 22 Can you repeat that question?  
 23 MR. GILSON: Yes.  
 24 As a planner, would it be prudent to  
 25 consider the current proliferation of drive-through

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1 different intensity of use and way more spread for  
 2 hours of use with that intensity.  
 3 Completely different than the bank  
 4 that's there, or was there.  
 5 It's vacant now.  
 6 MR. PLACIER: But yet, again, it's not  
 7 required by law to have one?  
 8 MS. HOLMQVIST: Not to my knowledge.  
 9 MR. PLACIER: Okay.  
 10 CHAIRMAN ANDERSON: Anyone else?  
 11 MR. ELIYA: Can you just -- if you  
 12 would just mind clarifying, you mentioned something  
 13 about the study done for the other restaurants on the  
 14 street.  
 15 You said they were irrelevant. If -- I  
 16 mean, if they're in the same area, wouldn't you -- I  
 17 would imagine that they would be fairly relevant if  
 18 it's a similar traffic pattern going in a similar  
 19 area.  
 20 How would those be irrelevant?  
 21 MS. HOLMQVIST: The menu items are  
 22 different, okay.  
 23 Taco Bell's menu is very different.  
 24 I don't know if there is an equal number of items on  
 25 the Taco Bell menu as compared to the Burger King and

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1 restaurants?  
 2 MR. WHITAKER: Objection.  
 3 As the basis, foundation of this, that  
 4 there's a proliferation.  
 5 MR. GILSON: If there's an existing --  
 6 MR. WHITAKER: No.  
 7 MR. GILSON: If you'd like to use the  
 8 word "existing." Would it be prudent to consider the  
 9 existence of drive-through restaurants and whether  
 10 more are appropriate in considering whether to ban  
 11 further drive-through restaurants?  
 12 MR. WHITAKER: Objection to the  
 13 question.  
 14 It's totally hypothetical, without  
 15 basis, without foundation.  
 16 MR. GILSON: Absolutely not.  
 17 MS. HERLIHY: Not to mention that the  
 18 governing body adopted the ordinance. Why they  
 19 adopted it, what they considered when they adopted  
 20 it, is really not a part of this application. It  
 21 exists.  
 22 And this board is here dealing with the  
 23 application because it exists.  
 24 So whether they adopted it because they  
 25 felt there were too many drive-throughs in town, or

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1 they were weren't happy with traffic, or whatever the  
2 reasons were, the ordinance exists now and we're  
3 dealing with the ordinance. I don't think it  
4 matters.

5 MR. GILSON: Well, we're dealing with  
6 whether this board should grant an exception to this  
7 ordinance, so I think it matters as to whether the  
8 reasons that it was considered. It's been brought up  
9 by both sides, the reasons behind the ordinance.

10 And I'm simply asking, as a planner,  
11 when you are drafting an ordinance to ban a certain  
12 type of use, whether or not it is appropriate to  
13 consider whether there are too many of that use  
14 existing in the zone? I think that's a fair  
15 question.

16 MS. HERLIHY: And even if the answer is  
17 yes, it doesn't mean that this governing body  
18 considered it when they adopted the ordinance.

19 MR. WHITAKER: It's irrelevant.

20 MR. GILSON: But I'm asking it as a  
21 general principle.

22 MR. WHITAKER: And what's the general  
23 principle for?

24 MR. GILSON: Whether, as a planner, it  
25 is appropriate or not.

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1 drafted this ordinance. Whether they considered all  
2 the things that you're saying, who knows. Maybe they  
3 did.

4 But it has nothing to do with us.

5 MR. GILSON: Mr. Chairman, my point was  
6 to the question as to whether other drive-throughs  
7 exist in this zone.

8 And my question then goes to that was  
9 considered in the ordinance and whether you should  
10 continue to grant a variance.

11 MR. WHITAKER: We don't know.

12 CHAIRMAN ANDERSON: We don't know and  
13 we don't care. We have an ordinance that's presumed  
14 to be valid.

15 MR. GILSON: Yes.

16 CHAIRMAN ANDERSON: We're not here to  
17 question whether the Mayor and Council know what  
18 they're doing, or why they did it, or whether it's a  
19 good ordinance or a bad ordinance. It's an  
20 ordinance.

21 Why they did it -- unless I'm  
22 misunderstanding your point.

23 MR. GILSON: My point was more that the  
24 current drive-throughs in the zone, they don't matter  
25 as to this ordinance.

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1 MR. WHITAKER: It makes no sense.

2 CHAIRMAN ANDERSON: Again,  
3 Mr. Whitaker, I understand your objection. It's on  
4 the record.

5 To end this, ask your question. Have  
6 her answer it. And we'll consider its relevance when  
7 we make a vote.

8 MR. GILSON: Is it an appropriate  
9 planning standard, when designing an ordinance, to  
10 consider the current existence of uses in a zone as  
11 to whether to ban further -- that use further in the  
12 zone?

13 MS. HOLMQVIST: Yes.

14 Zoning as well as master plan  
15 amendments, if you will, those are fluid planning  
16 documents in a community. It's not like a community  
17 sets forth zoning standards and never changes them.  
18 Conditions change. Recognition of issues, local  
19 issues, also comes into focus.

20 And it's not unusual to either outlaw,  
21 if you will, or permit certain uses based on the  
22 findings.

23 CHAIRMAN ANDERSON: We don't know that  
24 any of that happened, and it really doesn't matter.

25 For whatever reason, the governing body

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1 CHAIRMAN ANDERSON: To me -- you were  
2 here for -- and again, I'm only speaking for myself,  
3 not for the board.

4 The most important thing is the  
5 legislative history of the ordinance is that the  
6 Dunkin' Donuts application came here because our  
7 zoning officer concluded that our old ordinance  
8 required a use variance for a drive-through.

9 When it came here, we questioned  
10 whether they really needed a use variance. Our board  
11 attorney, the planning board attorney, the borough  
12 attorney conferred. And they all agreed that the  
13 ordinance then in effect did not require a use  
14 variance for a drive-through for the Dunkin' Donuts.

15 Within months after that, the Mayor and  
16 Council drafted this ordinance saying no  
17 drive-through restaurants allowed.

18 To me -- again I'm only speaking for  
19 myself. To me, that's the important part of it,  
20 is it's clear -- again to me -- that the Mayor and  
21 Council made it crystal-clear they don't want any  
22 more drive-through restaurants.

23 MR. GILSON: And I couldn't agree with  
24 you more.

25 CHAIRMAN ANDERSON: Well, I'm sure.

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1 But why -- you know, the rest of it is  
 2 immaterial.  
 3 Anyway, all right. I'm sorry.  
 4 Go ahead.  
 5 MR. GILSON: Questions of the board.  
 6 CHAIRMAN ANDERSON: Before we get to  
 7 David, questions.  
 8 Mr. Whitaker, I'm going to ask our  
 9 planner, or do you want to do your cross?  
 10 I just want to steal your thunder.  
 11 MR. WHITAKER: I don't have thunder,  
 12 but I think I'll ask my questions now.  
 13 CHAIRMAN ANDERSON: You can wait,  
 14 right?  
 15 MR. NOVAK: I can wait, yeah.  
 16 CROSS-EXAMINATION  
 17 BY MR. WHITAKER:  
 18 Q. Ms. Holmqvist, who is it that you  
 19 represent?  
 20 A. Burger Barn, LLC.  
 21 Q. And have you attended the meetings of  
 22 March the 8th, April the 17th, July 12th and  
 23 August 9th?  
 24 A. I believe I was here for all those.  
 25 Q. You believe you were or were there?  
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1 Isn't that the most relevant?  
 2 Q. No.  
 3 You're going to answer my questions.  
 4 You're going to answer my questions and not try to  
 5 answer the question with something you want to say.  
 6 Those are the rules. Okay?  
 7 So you weren't here in March. You  
 8 weren't here in April.  
 9 So the things you're opining about,  
 10 Taco Bell and the menu and things that were explained  
 11 at those meetings, you didn't have a transcript to  
 12 read and you never heard the testimony?  
 13 A. I heard the architect's testimony, your  
 14 traffic engineer, your site engineer.  
 15 And those are the most relevant --  
 16 Q. But not tonight if you're talking about  
 17 menu and you're talking about other things about Taco  
 18 Bell.  
 19 So you missed that meeting?  
 20 A. I didn't see any detail of the menu  
 21 board.  
 22 Q. That's your decision.  
 23 A. I reviewed the plans that are posted on  
 24 the website --  
 25 Q. So you didn't hear --  
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1 A. I was here from the beginning of the  
 2 application.  
 3 Q. You were here at the March 8th meeting,  
 4 the presentation made by the Taco Bell  
 5 representatives?  
 6 A. No.  
 7 Q. I didn't see you in the audience.  
 8 A. No.  
 9 Q. Were you here on April the 17th?  
 10 A. What was the testimony then?  
 11 Q. I don't know.  
 12 You tell me, if you remember it?  
 13 A. I didn't -- I did not record all the  
 14 meetings that I attended.  
 15 Q. Okay. Did you read all the  
 16 transcripts?  
 17 A. Yeah.  
 18 Q. Do you have the transcripts, and have  
 19 you read them?  
 20 You're under oath.  
 21 A. Most of them.  
 22 Q. Most of them.  
 23 Which ones did you read?  
 24 A. I was here for the applicant's planner  
 25 testimony.

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1 A. -- and I did not see a menu board  
 2 detail.  
 3 Q. That's not what I've asked you.  
 4 You didn't hear the testimony of the  
 5 March 8th meeting?  
 6 A. It wouldn't change my testimony.  
 7 Q. You wouldn't know that because you  
 8 don't know what the testimony was on the March 8th  
 9 meeting.  
 10 A. I know what the facts are based on the  
 11 plan that's been submitted to this board, and the  
 12 applicant's professional witnesses, that being the  
 13 site engineer, the traffic engineer and the planner.  
 14 Q. So I'm going to say right now, you did  
 15 not hear all of the testimony from all of the  
 16 witnesses that presented the case, correct; yes or  
 17 no?  
 18 A. I don't recall.  
 19 Q. You don't recall.  
 20 A. I don't remember.  
 21 Q. So you don't remember if you were in  
 22 this room on March the 8th?  
 23 A. My position --  
 24 Q. No.  
 25 I asked the question. Answer it.

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1 MR. GILSON: Objection.  
2 She's already answered this question.  
3 CHAIRMAN ANDERSON: She has?  
4 MR. WHITAKER: She has? Because I  
5 haven't heard it.  
6 CHAIRMAN ANDERSON: What was the  
7 answer? Was she here or wasn't she?  
8 MR. WHITAKER: Yeah.  
9 How hard is that? And that's just the  
10 beginning.  
11 MS. HOLMQVIST: I was here on  
12 July 12th. And I believe there was a June meeting.  
13 MR. WHITAKER: Let the record reflect  
14 that the witness has to look at her notes to  
15 determine when she has been here.  
16 MS. HOLMQVIST: I'm here to give an  
17 opinion.  
18 BY MR. WHITAKER:  
19 Q. No. I asked you the question. You  
20 haven't been able to answer it yet.  
21 A. No, you're right, I haven't.  
22 Q. Thank you.  
23 Ms. Holmqvist, have you met the  
24 principals of Burger Barn, LLC?  
25 A. No.

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1 Q. Have you had the ability to discuss  
2 with any of the members of the Burger Barn their  
3 concerns or their issues pertaining to this  
4 application?  
5 A. I have worked with Mr. Gilson's office.  
6 Q. So -- and Mr. Gilson is who?  
7 A. The ap -- the objectors' counsel.  
8 Q. So it would be correct to say that the  
9 concern being raised by your client -- and your  
10 client is really Burger Barn, LLC, correct?  
11 A. Burger Barn LLC.  
12 Q. Okay.  
13 So it would be correct to say that any  
14 concerns that Burger Barn, LLC has, the only way you  
15 know about them, if any at all, is through the  
16 attorney?  
17 A. I was asked to do --  
18 Q. No. It's a yes or no.  
19 A. -- an assessment of whether --  
20 (Simultaneous Speaking.)  
21 Q. No. It's a yes or no.  
22 A. -- of whether.  
23 Q. No, no, you're not going to --  
24 A. The testimony and the evidence --  
25 MR. GILSON: Objection.

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1 MR. WHITAKER: She can't answer the  
2 question with what she wants to say. I'm asking if I  
3 have a Bergen Barn, LLC has raised.  
4 MS. HERLIHY: It's Burger Barn.  
5 MR. WHITAKER: Burger Barn has raised  
6 -- has become an objector. And I'm asking if this  
7 planner has discussed what the applicant's concerns  
8 were with this application.  
9 That's a fair question.  
10 MS. HOLMQVIST: Well, we don't know  
11 what the impacts are to the intersection.  
12 MR. WHITAKER: I asked if she spoke to  
13 any of the principals.  
14 MS. HERLIHY: I'm not sure --  
15 MS. HOLMQVIST: The concerns were  
16 relayed to me by counsel.  
17 MS. HERLIHY: I'm not sure it's  
18 relevant whether she spoke to the applicant or the  
19 applicant's attorney, who is -- or the objectors'  
20 attorney, who is -- who is the representative or  
21 agent.  
22 But nonetheless, you should answer the  
23 question.  
24 MR. WHITAKER: Thank you.  
25 BY MR. WHITAKER:

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1 Q. Can we answer the question?  
2 A. I have been advised by Mr. Gilson and  
3 his office of what my charge is.  
4 Q. My question was just merely a yes or a  
5 no. Can we get a no?  
6 You didn't speak with the principals?  
7 A. The question is: Did I speak with the  
8 principal of Burger Barn, LLC?  
9 Q. Correct.  
10 A. No.  
11 Q. Okay. In the analysis that you've done  
12 as a planner, did you review this with any civil  
13 engineer?  
14 A. Did I review my --  
15 Q. The plans, yes.  
16 A. -- analysis with a civil engineer?  
17 Q. Yes.  
18 A. No.  
19 Q. Did you review it with any traffic  
20 engineer?  
21 A. No. I've been a planner for --  
22 Q. No. I don't care how long you've been  
23 a planner.  
24 A. -- 37 years, Mr. Whitaker.  
25 Q. I don't ask -- I'm not asking how long

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1 you're been a planner.  
 2 A. I don't understand the question.  
 3 MR. WHITAKER: Because I want to get --  
 4 I want to get to the basis of how she's based her  
 5 foundation and basis of the opinion that she's  
 6 already given. I just want to know if she's had any  
 7 input. I have the right to ask. I've already found  
 8 out -- just putting this on the record. I found out  
 9 she's never talked to the principals of the objector,  
 10 other than through counsel. Okay?  
 11 I have at this point found out that she  
 12 hasn't, in doing her analysis, relied on anybody  
 13 else's expert opinion. She's talked and commented  
 14 about traffic, about queuing and things like that.  
 15 But she's a planner.  
 16 MS. HERLIHY: She acknowledged that she  
 17 hasn't met with or discussed with those that you  
 18 specifically asked her about.  
 19 MR. WHITAKER: Correct.  
 20 MS. HERLIHY: You did not ask her if  
 21 she's met with or discussed with any other  
 22 professionals.  
 23 So you can't exclude all of them.  
 24 BY MR. WHITAKER:  
 25 Q. My next question: Other than counsel  
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1 MR. WHITAKER: Can I ask and direct  
 2 that the witness answer the question that I ask and  
 3 not opine on other things.  
 4 CHAIRMAN ANDERSON: You can ask that.  
 5 MR. WHITAKER: I mean, honestly.  
 6 CHAIRMAN ANDERSON: What do you want us  
 7 to do?  
 8 MR. WHITAKER: I want you to not  
 9 admonish her, but direct her to answer only the  
 10 question I ask.  
 11 Is that hard?  
 12 MS. HERLIHY: Please try to limit your  
 13 answers --  
 14 MR. WHITAKER: Thank you.  
 15 MS. HERLIHY: -- to the question at  
 16 hand.  
 17 And your counsel will then have the  
 18 opportunity to redirect and expound upon any of the  
 19 questions that he feels that he wants to after  
 20 Mr. Whitaker is done.  
 21 BY MR. WHITAKER:  
 22 Q. That menu board that's there on your  
 23 client's property, do you know how they got an  
 24 approval for that?  
 25 A. No.  
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1 for the applicant, have you discussed this and  
 2 reviewed this application with anyone else?  
 3 A. No.  
 4 Q. Have you been to the site?  
 5 A. Many times.  
 6 Q. And when you were at the site, did you  
 7 observe any congestion of the cars, automobiles and  
 8 motor vehicles on the -- on the shopping center,  
 9 itself?  
 10 A. No.  
 11 Q. Have you been to your client's site?  
 12 A. Yes.  
 13 Q. Does your client's site have a  
 14 drive-through?  
 15 A. Yes.  
 16 Q. Does your client's site have a reader  
 17 board?  
 18 A. There is a menu board.  
 19 Is that what you mean reader board?  
 20 Q. Menu board, reader board.  
 21 A. Yes.  
 22 Q. Interchangeable?  
 23 A. It also has a bypass lane.  
 24 Q. I didn't ask that, did I?  
 25 A. No.

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1 Q. If I work on the theory that menu  
 2 boards are not permitted in Midland Park, by virtue  
 3 of their ordinances, I would assume then that the  
 4 Burger King menu board would be illegal?  
 5 MR. GILSON: Mr. Chairman, I object to  
 6 this, as we're considering the merits of this  
 7 application, not of any previously approved  
 8 applications for any of the other restaurants.  
 9 MR. WHITAKER: She's told me I need a  
 10 variance for a menu board, so I can certainly go  
 11 through and show why.  
 12 MS. HERLIHY: First of all, we're not  
 13 in court.  
 14 Everybody, calm down.  
 15 They have leeway. There is leeway here  
 16 to ask questions, give answers.  
 17 You asked questions about, you know,  
 18 considering whether the Mayor and Council considered  
 19 the -- he's not out of line yet.  
 20 MR. WHITAKER: She brought it up, not  
 21 I.  
 22 BY MR. WHITAKER:  
 23 Q. The menu board at Wendy's, the menu  
 24 board at Burger King --  
 25 A. What did I bring up?

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1 Q. Menu board -- I'm saying it. At  
 2 Dunkin' Donuts. And a menu board --  
 3 A. What did I bring up, though?  
 4 Q. And a menu board exists at Starbucks.  
 5 So your opinion is that the ordinance doesn't permit  
 6 any menu boards in Midland Park, correct?  
 7 A. That's my interpretation.  
 8 But you have the borough planner here,  
 9 you should ask him.  
 10 MR. WHITAKER: Are we going to continue  
 11 that way, or is she going to answer my question?  
 12 MS. HOLMQVIST: The Borough planner  
 13 is here.  
 14 MR. WHITAKER: I'm building a record.  
 15 BY MR. WHITAKER:  
 16 Q. How often have you been to your  
 17 client's site?  
 18 A. As many times as I've been to your  
 19 client's site.  
 20 Q. And how many times was that?  
 21 A. I would say about five.  
 22 Q. And have you observed the motor  
 23 vehicles that queue on your client's site?  
 24 A. There really hasn't been a queue.  
 25 I would say I've observed maybe three

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1 Q. So I just would like to throw out a  
 2 hypothetical to you, just something I thought of.  
 3 You know as a planner that what you  
 4 have at Burger King right now, based on this  
 5 ordinance, would be a nonconforming use, correct, the  
 6 drive-through restaurant?  
 7 A. If we were demolishing the building the  
 8 way you're doing, and somebody wanted to build a  
 9 Burger King with a drive-through, is this the  
 10 hypothetical?  
 11 Q. No.  
 12 A. We're wiping the slate clean the way  
 13 you are.  
 14 Q. I was going to use the hypothetical of  
 15 this, okay? The Burger King has a fire. More than  
 16 50 percent of the building is destroyed. Now, you  
 17 know under the planning concept that nonconformity  
 18 goes away, correct?  
 19 A. I don't know what approvals were given.  
 20 Q. I didn't ask that question.  
 21 A. I haven't seen --  
 22 Q. Here we go again.  
 23 A. Well, it does matter. It does matter.  
 24 And I don't have that information.  
 25 Q. So let's just say that the Burger King

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1 cars the times I've been at my client's site.  
 2 Q. The queuing and the ingress and egress  
 3 on your client's site, do they come in off of Godwin  
 4 Avenue and go out of Godwin Avenue?  
 5 A. There are driveways on Godwin, correct.  
 6 Q. Both the entry and the exit?  
 7 A. Yes.  
 8 Q. Have you ever observed the Wendy's  
 9 facility?  
 10 A. Yes.  
 11 Q. Okay. Do you know how they exit and  
 12 enter?  
 13 A. On Godwin.  
 14 On -- from Godwin.  
 15 Q. And from what you have seen at your  
 16 client's site, would it be correct to say that the  
 17 drive-through is operational and works, from a  
 18 planning perspective?  
 19 A. There's a bypass there. I haven't  
 20 observed a large queue. And there's plenty of  
 21 surface parking as well.  
 22 Q. So we have an ordinance in place now  
 23 that says that no drive-throughs for a restaurant are  
 24 permitted. That's what we're dealing with?  
 25 A. Yes.

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1 got built before 2021 when the ordinance was changed.  
 2 Would that make it a nonconforming use, from a  
 3 planning perspective?  
 4 A. If it was existing? Let's talk, like,  
 5 if it was built in the 1960s or '50s. I don't know  
 6 what we're doing hypothetically here.  
 7 Q. It was built before 19 -- before 2021.  
 8 MS. HERLIHY: The ordinance in question  
 9 that prohibits a drive-through restaurant was adopted  
 10 in 2021.  
 11 So any drive-through restaurant in  
 12 those two zones that exist as of the day the  
 13 ordinance was adopted are preexisting, nonconforming  
 14 uses, which may continue unchanged. You can't expand  
 15 them.  
 16 As Mr. Whitaker says if they are  
 17 abandoned in some way, which potentially 50 -- I'm  
 18 not sure if 50 percent, I don't know if we have an  
 19 ordinance that has a different number.  
 20 MR. WHITAKER: Well, it's case law that  
 21 says --  
 22 MS. HERLIHY: Potentially he's getting  
 23 -- that's his point, I believe. I don't want to put  
 24 words in his mouth. But that is a preexisting  
 25 nonconforming use by virtue of the ordinance that now

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1 outlaws drive-through restaurants, such as the  
 2 existing Burger King, the existing Wendy's.  
 3 MS. HOLMQVIST: Okay. I have not  
 4 looked at --  
 5 BY MR. WHITAKER:  
 6 Q. With that hypothetical -- let's trust  
 7 what Ms. Herlihy has said as being factual, that it  
 8 was built before 2021, and it's a nonconforming use,  
 9 and it now gets destroyed by fire, by mayhem, or  
 10 whatever. And the applicant comes to you and would  
 11 want to rebuild it there. You would have to seek  
 12 what type of a variance at that point?  
 13 A. That would be a D variance.  
 14 Q. Right.  
 15 And you would be seeking the type of  
 16 variance for a restaurant with a drive-through,  
 17 correct?  
 18 A. If they wanted to build a  
 19 drive-through, yes.  
 20 Q. And let's assume they wanted to. Could  
 21 you, from a planning perspective, support that  
 22 application there?  
 23 A. I would have to look closely at that.  
 24 I can't just render an opinion.  
 25 Q. So you wouldn't have an opinion as to

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1  
 2 BY MR. WHITAKER:  
 3 Q. Now, as far as the proposal here, you  
 4 made a big to-do about where the doorway is to this  
 5 facility and where the ADA parking is.  
 6 The ADA parking was testified to by a  
 7 civil engineer and by our traffic engineer that it's  
 8 code compliant, ADA compliant. Would you agree from  
 9 your knowledge of this?  
 10 A. Yes.  
 11 Q. And there's no prohibition in the code,  
 12 as I understand it, to have an entry door to a  
 13 building coming from the parking lot, isn't that  
 14 correct?  
 15 A. No.  
 16 But as I said --  
 17 Q. I just said the ordinance, there's no  
 18 prohibition to it, right?  
 19 A. No.  
 20 Q. It doesn't need a variance?  
 21 A. No.  
 22 But as a planner --  
 23 Q. I didn't ask you as a planner.  
 24 A. -- I don't think having a front door in  
 25 the parking lot --

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1 whether that could be done?  
 2 MR. GILSON: Objection.  
 3 Mr. Whitaker's entire testimony was  
 4 that there are special reasons why his property  
 5 qualifies.  
 6 MR. WHITAKER: I haven't gotten there  
 7 yet.  
 8 MR. GILSON: Those special reasons can  
 9 very well apply to the Burger King.  
 10 As such, I think it's inappropriate  
 11 that we continue down this path of discussing the  
 12 Burger King property, which is not the subject of  
 13 this application.  
 14 CHAIRMAN ANDERSON: Where are you going  
 15 with this?  
 16 MR. WHITAKER: I'm just asking -- just  
 17 asking to show that -- and I'm building the case, and  
 18 you'll hear from me more about this -- is that this  
 19 ordinance could create a situation where you don't  
 20 have drive-throughs in the town whatsoever.  
 21 I'll get there. Not with this witness.  
 22 MS. HERLIHY: Drive-through  
 23 restaurants.  
 24 MR. WHITAKER: Drive-through  
 25 restaurants.

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1 Q. I didn't ask that question.  
 2 A. -- not on Godwin Avenue --  
 3 Q. Strike the answer.  
 4 CHAIRMAN ANDERSON: Ask that question.  
 5 She's a planner and she's giving her planning  
 6 testimony.  
 7 MR. WHITAKER: I didn't ask her as a  
 8 planner. I asked her if the ordinance requires it.  
 9 BY MR. WHITAKER:  
 10 Q. Now, as a planner, you've stated that  
 11 you've represented certain municipalities in doing  
 12 ordinances for them?  
 13 A. Correct.  
 14 Q. Okay. And you know the procedure on  
 15 the Municipal Land Use Law for creating a land use  
 16 ordinance or modifying a land use ordinance?  
 17 A. Yes.  
 18 Q. And in your capacity as a planner in  
 19 your 30-plus years of doing this work, have you been  
 20 called upon to give advice as a planner for the  
 21 creation of an ordinance or for the modification of  
 22 an ordinance?  
 23 A. Yes. I've been asked to draft  
 24 ordinances.  
 25 Q. Okay.

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1 A. Or amendments thereto.  
 2 Q. And when you draft those ordinances, in  
 3 many instances would it be correct -- correct me if  
 4 I'm wrong -- as a planner, you give the pros and the  
 5 cons of the reasons why an ordinance should be  
 6 created?  
 7 A. The pros and the cons?  
 8 Sometimes the local officials have  
 9 already recognized issues and they want the ordinance  
 10 drafted to permit or prohibit.  
 11 Q. So you follow those type of  
 12 instructions and those type of --  
 13 A. Yeah.  
 14 If I saw something of concern, I would  
 15 certainly point it out.  
 16 Q. And many times those type of concerns  
 17 are listed in the ordinance in the preamble?  
 18 A. Sometimes. It can be. It can be.  
 19 It's not mandatory, though.  
 20 Q. I didn't say that. I said sometimes.  
 21 Okay.  
 22 And that ordinance first starts, as I  
 23 understand it, with the introduction by the Mayor and  
 24 Council, correct?  
 25 A. Yes.

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1 opinion you've given?  
 2 A. Not always.  
 3 Sometimes it's not referred to the  
 4 planner. It's really at the discretion of the local  
 5 officials.  
 6 Q. As a planner, if they've relied upon  
 7 you to do something like this and you've given a  
 8 memorandum, they discuss it, they review it?  
 9 A. I would hope.  
 10 Q. Okay. And then what happens?  
 11 The planning board makes that response  
 12 back to the Mayor and Council hopefully within the 35  
 13 days?  
 14 A. Right.  
 15 And it's strictly whether it's  
 16 consistent or inconsistent with the master plan.  
 17 Q. And then at that point an ordinance  
 18 would be adopted?  
 19 A. Right.  
 20 Published and so forth.  
 21 Q. Thank you.  
 22 You weren't here for the testimony,  
 23 we've established that, of our first witness, Ever  
 24 Santana? You don't know that name, do you?  
 25 A. No.

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1 Q. And then what happens next after that?  
 2 A. Then it's referred to the planning  
 3 board for consistency review with the master plan.  
 4 Q. And they have 35 days to do that, don't  
 5 they?  
 6 A. I believe that's correct.  
 7 Q. Okay. And what is it that they have to  
 8 do after they've had that consistency review; what do  
 9 they do?  
 10 A. Well, they look at their master plan.  
 11 And at that point, they may refer it to the board  
 12 planner to give an opinion on consistency. I've been  
 13 asked to do that many times.  
 14 Q. And what do you do when you've been  
 15 asked to do that?  
 16 A. I'll usually do a written memorandum to  
 17 the planning board, giving the opinion on whether the  
 18 proposed ordinance is consistent or inconsistent with  
 19 the master plan.  
 20 And then the planning board will review  
 21 that, and they'll make a recommendation to the  
 22 governing body.  
 23 Q. And when they send that back to the  
 24 governing body, would it be correct that many times  
 25 they'll also send with that your memorandum or the

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1 Q. So let me just back up a little bit and  
 2 tell you that he's the Manager of Operations for this  
 3 applicant. And he testified as to the hours of  
 4 operation. He testified as to the number of  
 5 employees.  
 6 You're familiar with that type of  
 7 testimony that a manager of an operations would give?  
 8 A. Correct.  
 9 Q. Okay. But you didn't hear that or --  
 10 because you opine on a couple things tonight. But  
 11 you didn't hear that testimony of Mr. Santana?  
 12 A. No, no.  
 13 Q. Okay. So you didn't hear the testimony  
 14 of him in which he stated that industry-wide  
 15 post-pandemic -- it's in the transcript that you  
 16 haven't read -- 75 percent of the customers now use a  
 17 drive-through or DoorDash for a --  
 18 A. Taco Bell.  
 19 Q. No. For fast-food-style restaurants.  
 20 A. Okay, 75 percent of fast-food customers  
 21 no matter what restaurant it is?  
 22 Q. Taco Bell, Burger King, Wendy's, fast  
 23 food, okay? That's what he testified to. That's  
 24 news to you? He calls that a QSR, quick-service  
 25 restaurant.

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1 You've heard that term?

2 A. It could be even higher. Because in

3 Livingston I worked on a Starbucks, and there was

4 upwards of 75, 85 percent was predicted to come

5 through the drive-through.

6 Q. So if I had 85 percent going through a

7 drive-through at a facility, just hypothetically

8 here -- and that's been established that it's an

9 industry standard, 75, 85 percent -- and I didn't

10 have a drive-through at a facility, probably that

11 business would not be very viable, correct, a QSR?

12 A. If the restaurant wanted a

13 drive-through and that was imperative to their

14 business plan, this would not be a good site because

15 it's not permitted.

16 Q. Okay. So, effectively, by the

17 establishment of -- a prohibition of a drive-through

18 for a QSR, effectively realistically, based upon this

19 85 or 75 percent factor, basically prohibiting

20 quick-service restaurants in Midland Park?

21 A. You know, in the B-1 and the B-3.

22 But I don't know about the other zones

23 in the Borough.

24 Q. Right.

25 A. But in the B-1 and the B-3 perhaps,

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1 in from a heavily trafficked road like Godwin Avenue

2 but can take the traffic in internally and also

3 dispel the traffic in a drive-through facility?

4 A. Can I just -- I want to understand what

5 you're saying. Okay?

6 When you say take the traffic in, are

7 we talking about from the parking lot?

8 Q. Yeah. Taking traffic from a parking

9 lot rather than having it come directly in from the

10 street.

11 A. So having the restaurant here, you're

12 saying?

13 Q. Not this specific one.

14 A. Okay. We're not talking about this

15 site.

16 Q. I'm just saying that from a planning

17 perspective, if there's some attributes to having

18 entrance and exiting of a QSR occur internally,

19 rather than on a heavily trafficked road?

20 A. I think that's for your traffic

21 engineer. I -- no.

22 Q. So you don't know?

23 A. It's not that I don't know. I don't

24 think that's a planning question.

25 Q. Okay.

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1 yeah.

2 Q. Did you look at the -- at the list of

3 properties that are in the B-1 and the B-3 and the --

4 A. No.

5 (Simultaneous Speaking.)

6 Q. -- comparison of the size of the other

7 QSRs in Midland Park and what is being proposed here?

8 A. That was produced by your planner.

9 Q. Yes. Did you review that?

10 A. I did look at it, yeah.

11 Q. Okay. And do you agree with him that

12 he testified that in a couple instances this piece of

13 property is seven times bigger than where the Dunkin'

14 Donuts is, for instance?

15 A. Yeah.

16 I believe the Dunkin' Donuts and the

17 Starbucks are about a little -- 28,000, 20,000,

18 something like that, square feet.

19 I'm going off my memory. This site,

20 the entirety of it is three-and-a-half acres.

21 Q. Three-and-a-half acres?

22 A. Yes.

23 Q. Okay. From a planning perspective,

24 would it be correct to say that a facility, a QSR,

25 that has the ability not to immediately take traffic

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1 A. I don't think that's a planning

2 question.

3 Q. Fair enough. Okay.

4 It's beyond your expertise. I respect

5 that.

6 A. Every site is unique. And you just

7 told me we're not talking about this site, so I don't

8 know what site we're talking about.

9 So I'm not comfortable giving an

10 opinion on a site I don't know about.

11 Q. I was talking about an overview

12 planning concept, if you had an opinion as to whether

13 taking traffic of a county road into a -- into a

14 facility versus queuing off a county road, like your

15 client does right now, which would be better.

16 But you don't have an opinion on that.

17 I respect that.

18 MR. WHITAKER: Just a few more,

19 Mr. Chairman.

20 Bear with me.

21 BY MR. WHITAKER:

22 Q. You stated that we are seeking a

23 variance for impervious coverage.

24 A. Yes.

25 Q. But as one of the members of the board

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1 said, you do recognize that the amount of impervious  
 2 coverage is going to be reduced versus what's there  
 3 now?  
 4 A. A slight reduction.  
 5 Q. Okay.  
 6 From a planning perspective --  
 7 A. Let me just clarify. It's permitted at  
 8 75. I believe it's existing 83.6 and proposed as  
 9 82.6, correct, yeah.  
 10 Q. Right.  
 11 So any time you can reduce impervious  
 12 coverage, from a planning perspective, no matter how  
 13 small it may be, does that constitute a positive from  
 14 a planning perspective?  
 15 Just a yes or no?  
 16 A. It's de minimis, in my opinion.  
 17 Q. I said even if it's de minimis.  
 18 A. It's de minimus.  
 19 Q. But is it a positive or is it a  
 20 negative?  
 21 A. It's de minimis.  
 22 Q. Okay. We don't want to answer the  
 23 question. I understand.  
 24 You talked about a bypass lane. And  
 25 you made a comment that it's based on an industry

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1 standard or whatever.  
 2 Do you have a treatise or anything you  
 3 can tell me where you read that?  
 4 A. Three out of the four fast-food  
 5 restaurants, I'll say, in the borough have bypass  
 6 lane.  
 7 Q. But that wasn't my question.  
 8 A. That's my answer.  
 9 Q. That's the only answer you can give?  
 10 A. That's my answer.  
 11 Q. Because you don't really have a basis  
 12 or foundation for knowing that on a national level?  
 13 A. It certainly would be safer to have a  
 14 bypass lane.  
 15 Q. You still don't answer my question.  
 16 Were you here for the testimony from  
 17 Mr. Missey, probably the second meeting --  
 18 A. I was here for Mr. Missey.  
 19 Q. -- when he testified about the fencing  
 20 that would be put along Godwin to eliminate light  
 21 pollution and the headlights facing Godwin, and the  
 22 bollards that would be put in; do you recall that  
 23 testimony?  
 24 A. The bollards? It's board-on-board  
 25 fence we're talking about right here along Godwin

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1 (indicating).  
 2 Q. And bollards --  
 3 A. But I believe there's a break in the  
 4 fence. Am I correct?  
 5 There's a break in the fence. It's not  
 6 a solid continuous fence.  
 7 Q. I believe it's a solid fence. And it  
 8 can be if the board sees that that's got to be a  
 9 condition of approval.  
 10 You also made a comment that you were  
 11 not aware of what -- let me look at what you said,  
 12 because I wrote it down. You weren't sure of what  
 13 the characteristics of a Taco Bell are different from  
 14 a Burger King.  
 15 What did you mean by that?  
 16 A. It's a different type of food. They're  
 17 not cooking burgers. I don't -- I don't frequent  
 18 fast food so...  
 19 But, no, it's different. Different  
 20 menu items. Totally different.  
 21 Q. But it's still a QSR?  
 22 A. Yes.  
 23 Q. I didn't know if you were trying to  
 24 distinguish Taco Bell from an American hamburger,  
 25 other than it's a different food.

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1 A. I prefer a burger.  
 2 MR. WHITAKER: Mr. Chairman, I have no  
 3 further questions at this time.  
 4 CHAIRMAN ANDERSON: Mr. Gilson, do you  
 5 have redirect?  
 6 MR. GILSON: Very brief.  
 7 I'm going to keep this simple because  
 8 we got a lot of information coming back and forth.  
 9 REDIRECT EXAMINATION  
 10 BY MR. GILSON:  
 11 Q. The Council passed an ordinance banning  
 12 drive-through restaurant in this zone, correct?  
 13 A. Yes.  
 14 Q. The conditions at this site exist  
 15 substantially similar today as they did on that date?  
 16 A. Yes.  
 17 Q. And it is your professional planning  
 18 opinion the applicant has provided no testimony to  
 19 support the -- insufficient testimony to support  
 20 special reasons for the granting of a D variance?  
 21 A. That's my opinion, yes.  
 22 MR. GILSON: No further questions.  
 23 MS. HERLIHY: Thank you.  
 24 CHAIRMAN ANDERSON: David or board,  
 25 does anybody have -- let's hear from David.

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1 MR. NOVAK: Just questions for this  
2 time.  
3 CHAIRMAN ANDERSON: Yes. For the  
4 witness?  
5 Actually, anything you have to offer  
6 would be appreciated.  
7 MR. NOVAK: I'm sorry.  
8 CHAIRMAN ANDERSON: Anything you have  
9 to offer would be appreciated.  
10 MR. NOVAK: Oh, thank you.  
11 Thank you.  
12 I know the board might have some  
13 questions for me. I don't know if it will be tonight  
14 or the next hearing, but not to beat a dead horse,  
15 because we've heard a lot of testimony and a lot -- a  
16 lot of cross-examination.  
17 Can you just -- can you just discuss  
18 the negative criteria a little bit more?  
19 When we talk about no substantial  
20 detriment to the public good and no substantial  
21 impairment to the intent of the zone plan, how does  
22 that relate to the ordinance that was adopted by the  
23 Council, and specifically harping on the Chairman's  
24 question that the ordinance was really directed  
25 towards fast food -- I'm sorry -- restaurants with

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1 opposite us. We have a defunct bank, vacant bank,  
2 here.  
3 But this really is the entryway to a  
4 residential neighborhood once you -- once you leave  
5 Godwin.  
6 Talking about substantial impairment to  
7 the intent and purpose of the --  
8 MS. HERLIHY: I'm sorry.  
9 Before you do that, back to the adverse  
10 impacts, so it's your opinion that those adverse  
11 impacts that you just described are specific to the  
12 fact that this is a drive-through restaurant as  
13 opposed to just the drive-through aspect, itself?  
14 In other words, if they were -- as the  
15 Chairman has said, if they were proposing a  
16 drive-through bank with the very same layout, the  
17 very same queue, would you have the same issues or  
18 the same adverse impacts?  
19 So it's not necessarily related to the  
20 fact that it's a drive-through for the restaurant?  
21 It's a question not -- it doesn't sound like it's  
22 coming out as a question.  
23 MS. HOLMQVIST: I do think I understand  
24 what you're deriving. Correct me if I have not.  
25 I mentioned during my testimony the

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1 drive-throughs, not drive-throughs in general, but  
2 drive-through restaurants?  
3 If you can just focus on the negative  
4 criteria of that. Really open it up for more of a  
5 broader perspective as opposed to looking at the  
6 specifics of each thing.  
7 MS. HOLMQVIST: Okay.  
8 So the first prong of the negative  
9 criteria is no substantial detriment to the public  
10 good. Okay?  
11 And the opinions that I'm offering for  
12 the board to consider is that this applicant has not  
13 really discussed the impacts to the surrounding  
14 residential area or the pedestrians along Godwin  
15 Avenue.  
16 There's what I consider to be a limited  
17 traffic analysis. Again, no identification of level  
18 of service at the intersection. No analysis of  
19 turning movements at the intersection. And no origin  
20 destination information, where is traffic coming from  
21 to arrive at the site, where it's leaving to, and  
22 what are the turning movements related to that.  
23 The Master Plan talks a lot about  
24 compatibility with residential areas.

As a planner, yes, we have an office  
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1 intensity of the use and how Mr. Whitaker corrected  
2 me about the hours of operation.  
3 But I think he would agree, they're  
4 going to have greater operating hours than a bank  
5 that was previously there. The ordering does not  
6 occur at a bank. Okay? You're conducting  
7 transactions, financial transactions. Maybe you have  
8 a question, but it's not going to be on the order of  
9 waiting on line and having people ask questions about  
10 menu items.  
11 Then I left out the delay of deciding  
12 amongst the people in the car who is getting what,  
13 right, or changing the order.  
14 So it's a more intense use. The  
15 characteristics of the use are very different on top  
16 of that. I think that's what you're trying to get  
17 at. Yeah.  
18 So I'll go on to the second prong.  
19 Yeah?  
20 The substantial impairment to the intent  
21 and purpose of the zone plan. I believe that this  
22 application as presented fails to satisfy the  
23 negative criteria for these reasons. You have a  
24 recent master plan that I enumerated the goals that  
25 talk about preserving residential neighborhoods. And

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1 this is completely contrary to that.  
 2 It also talks about streetscape,  
 3 pedestrian environment, for Godwin Avenue. This  
 4 introduces a situation where we have the back of the  
 5 building further exacerbated by the drive-through  
 6 lane. I mean, I think it's concerning enough that  
 7 the building back faces Godwin, which is a shopping  
 8 area someplace with sidewalks where people obviously  
 9 walk to visit local businesses. It's certainly  
 10 within walking distance of the residential  
 11 neighborhood to the north. And yet we have something  
 12 -- a design completely contrary. And that contrary  
 13 design is totally driven by having the drive-through  
 14 lane because obviously they're not going to put a  
 15 front door where you have to cross the queue of  
 16 vehicles waiting to order.  
 17 That's my response to your planner,  
 18 unless he wants to follow up on that.  
 19 MR. NOVAK: That's all I have for now.  
 20 Thank you.  
 21 CHAIRMAN ANDERSON: That's all you  
 22 have? Okay.  
 23 You're finished?  
 24 MR. GILSON: Yes.  
 25 Unless -- yeah.

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1 some people here who haven't been here before, so  
 2 I'll explain this once again.  
 3 The public is afforded a number of  
 4 opportunities to address the board. Right now we're  
 5 opening the meeting to the public to ask questions  
 6 only of this witness.  
 7 At the end of the application, when  
 8 everything is -- all the evidence is in and  
 9 everything else, there will be an opportunity for  
 10 members of the public to address the board to say  
 11 whatever you want about it, whether you like it, you  
 12 don't like it. It's whatever. You don't -- just  
 13 tell us what you think.  
 14 But for right now, all we want is  
 15 questions of this witness, either something you  
 16 didn't understand or something that you want to hear  
 17 that she didn't say or whatever.  
 18 So does anybody in the public have a  
 19 question for this witness?  
 20 (No Response.)  
 21 CHAIRMAN ANDERSON: Seeing none --  
 22 seeing none?  
 23 Is there anyone behind Mr. Gilson?  
 24 Okay.  
 25 Motion to close?

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1 CHAIRMAN ANDERSON: Okay. We're going  
 2 to open to the public.  
 3 MR. GILSON: Yes.  
 4 CHAIRMAN ANDERSON: Motion to open to  
 5 the public.  
 6 VICE CHAIRMAN PAPAPIETRO: Motion to  
 7 open to the public.  
 8 MR. GILSON: This is opening for  
 9 questions of Ms. Holmqvist.  
 10 CHAIRMAN ANDERSON: Yes.  
 11 MR. FORMICOLA: Second.  
 12 MS. HARMON: Mr. Zuidema?  
 13 MR. ZUIDEMA: Yes.  
 14 MS. HARMON: Mr. Formicola?  
 15 MR. FORMICOLA: Yes.  
 16 MS. HARMON: Mr. Papapietro?  
 17 VICE CHAIRMAN PAPAPIETRO: Yes.  
 18 MS. HARMON: Mr. Placier?  
 19 MR. PLACIER: Yes.  
 20 MS. HARMON: Mr. Eliya?  
 21 MR. ELIYA: Yes.  
 22 MS. HARMON: Mr. Capalbo?  
 23 MR. CAPALBO: Yes.  
 24 MS. HARMON: Mr. Anderson?  
 25 CHAIRMAN ANDERSON: Yes. Okay. I see

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1 MR. FORMICOLA: Motion.  
 2 VICE CHAIRMAN PAPAPIETRO: Second.  
 3 MS. HARMON: Mr. Zuidema?  
 4 MR. ZUIDEMA: Yes.  
 5 MS. HARMON: Mr. Formicola?  
 6 MR. FORMICOLA: Yes.  
 7 MS. HARMON: Mr. Papapietro?  
 8 VICE CHAIRMAN PAPAPIETRO: Yes.  
 9 MS. HARMON: Mr. Placier?  
 10 MR. PLACIER: Yes.  
 11 MS. HARMON: Mr. Eliya?  
 12 MR. ELIYA: Yes.  
 13 MS. HARMON: Mr. Capalbo?  
 14 MR. CAPALBO: Yes.  
 15 MS. HARMON: Mr. Anderson?  
 16 CHAIRMAN ANDERSON: Yes. All right.  
 17 Do you have anything else tonight?  
 18 MR. GILSON: I have nothing further.  
 19 In summation, I would just like to say,  
 20 as I've said many times, this ordinance was passed.  
 21 This site existed the way it currently does. And  
 22 there has been, now supported by our expert  
 23 testimony, insufficient special reasons to grant a  
 24 variance from that ordinance.  
 25 With that, Mr. Chairman, thank you for

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1 your time.

2 CHAIRMAN ANDERSON: Okay.

3 And, Mr. Whitaker, you've already told  
4 us that you're not giving your summation tonight?

5 MR. WHITAKER: I couldn't give my  
6 summation until I hear from the public except -- and  
7 digest what I've heard this evening. And I have some  
8 questions of your planner also.

9 CHAIRMAN ANDERSON: Do you want to do  
10 that now?

11 MR. WHITAKER: Just a couple questions,  
12 just so I can get it clarified.

13 When I look at this ordinance that came  
14 about in 2021, 19-21, in looking at the definitions,  
15 it prohibits a drive-through restaurant. But you've  
16 seen what -- correct me if I'm wrong -- what the  
17 definition of a drive-through restaurant is. It  
18 doesn't mean I need to have a window, correct?

19 MR. NOVAK: The reason I'm pausing is  
20 that I'm reading the definition of the drive-through  
21 restaurant in the ordinance, which I will read out  
22 loud.

23 "An establishment in which food or  
24 drink is served to customers with the  
25 automobiles outside the confines of the

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1 drive-through is required, which is ironic because

2 it's the drive-through restaurant definition.

3 But it is simply food being brought  
4 outside to a car.

5 MR. WHITAKER: So that's prohibited. I  
6 just want to make sure of that. Okay.

7 Now, in connection with that ordinance  
8 in 2021, you were the planner, or Burgis Associates,  
9 was the planner for the town?

10 MR. NOVAK: That is correct.

11 MR. WHITAKER: And you heard --  
12 Ms. Holmqvist already testified that as a planner,  
13 many times you're called upon to give a planning  
14 opinion or some input when ordinances are adopted, or  
15 amended, or changed, or altered?

16 MR. NOVAK: That is correct.

17 MR. WHITAKER: In connection with the  
18 modifications that were made to the ordinance that  
19 said thou shalt not have a drive-through restaurant  
20 in the B-1 and B-3 Zone, were you consulted in that  
21 in any manner whatsoever?

22 MR. NOVAK: I was not, no.

23 MR. WHITAKER: So it's correct to say  
24 you gave no planning information or any planning  
25 opinion or any basis or foundation for the ordinance

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1 building and where the consumption of such  
2 food or drink is intended to occur off the  
3 premises."

4 MR. WHITAKER: So if I have a  
5 restaurant in the B-1 or B-3 Zone, and I pull up. I  
6 don't have a drive-through window. I pull into a  
7 parking space. And the owner comes out and hands me  
8 my bag of food.

9 That's prohibited by that definition of  
10 drive-through?

11 MR. NOVAK: I would tend to agree. It  
12 doesn't necessarily --

13 MR. WHITAKER: Very prevalent during  
14 the timeframe of COVID.

15 MR. NOVAK: I was thinking more of a  
16 Sonic type of design so...

17 MR. WHITAKER: But it could be -- you  
18 know, if Auturo's was in the zone and I had --  
19 couldn't get out of the car, as a matter of courtesy  
20 they wanted to bring it out to me in the rain under  
21 and umbrella, they really are prevented from doing it  
22 based on the ordinance that was passed, correct?

23 MR. NOVAK: Based on that definition of  
24 drive-through restaurant, I would agree that it's  
25 fairly broad in its term. It does not specify that

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1 to then prohibit what's called a drive-through  
2 restaurant?

3 MR. NOVAK: That is correct.

4 MR. WHITAKER: Thank you.

5 Members of the public.

6 CHAIRMAN ANDERSON: Okay. I don't know  
7 exactly where you're going with this.

8 MR. WHITAKER: You'll find out.

9 CHAIRMAN ANDERSON: I mean, I know you  
10 know this, but we're obviously not in the position to  
11 judge whether the ordinance is well-drafted or not,  
12 or whether the Mayor and Council should have done  
13 something else.

14 MR. WHITAKER: I'm not suggesting that.

15 I am not picking on the Mayor and Council, okay? I  
16 started my opening in March -- Ms. Holmqvist missed  
17 it -- by saying that there was some very different  
18 approaches to drive-throughs that made this unique.  
19 And I'm going to be talking to you about, in essence,  
20 this was never thought of when the ordinance was  
21 passed. And that's something you can consider,  
22 because that can make it particularly suited. That's  
23 all I'm giving away tonight.

24 CHAIRMAN ANDERSON: All right.

25 So, Mr. Whitaker, we're agreed that

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1 your case is complete?  
 2 MR. WHITAKER: The case is concluded.  
 3 Just summation.  
 4 CHAIRMAN ANDERSON: So now before we  
 5 open this to the public for comments, does anybody on  
 6 the board have anything to say?  
 7 VICE CHAIRMAN PAPAPIETRO: Just a  
 8 comment for the next meeting, or before the next  
 9 meeting, because this has gone on for -- since March.  
 10 Here we are going to be in September,  
 11 maybe October. That's right, we'll be in October.  
 12 Can we get a current write-up of again what they're  
 13 looking for again and, like, a summation and an  
 14 updated version of that? Because it's been going on  
 15 so long.  
 16 I have a lot of notes but it would help  
 17 to have it consolidated.  
 18 MR. WHITAKER: The answer is yes.  
 19 CHAIRMAN ANDERSON: I'm sure  
 20 Mr. Whitaker will tell us the C variances he needs  
 21 and everything else.  
 22 MR. WHITAKER: I'll provide an outline  
 23 before the hearing.  
 24 VICE CHAIRMAN PAPAPIETRO: Thank you.  
 25 CHAIRMAN ANDERSON: And I never gave

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1 you an opportunity, Rich. I didn't think you would  
 2 have anything about planning but...  
 3 MR. WOSTBROCK: I let Dave talk about  
 4 the planning.  
 5 CHAIRMAN ANDERSON: All right.  
 6 So, that being the case, do we have a  
 7 motion to open it to the public for comments.  
 8 MR. FORMICOLA: I'll make a motion to  
 9 open it up to the public for comments.  
 10 MR. ZUIDEMA: Second.  
 11 MS. HARMON: Mr. Zuidema?  
 12 MR. ZUIDEMA: Yes.  
 13 MS. HARMON: Mr. Formicola?  
 14 MR. FORMICOLA: Yes.  
 15 MS. HARMON: Mr. Papapietro?  
 16 VICE CHAIRMAN PAPAPIETRO: Yes.  
 17 MS. HARMON: Mr. Placier?  
 18 MR. PLACIER: Yes.  
 19 MS. HARMON: Mr. Eliya?  
 20 MR. ELIYA: Yes.  
 21 MS. HARMON: Mr. Capalbo?  
 22 MR. CAPALBO: Yes.  
 23 MS. HARMON: Mr. Anderson?  
 24 CHAIRMAN ANDERSON: Yes. Okay.  
 25 Anybody in the public who wants to make

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1 the board aware of anything regarding this  
 2 application?  
 3 MS. ROSSO: I do.  
 4 Can this be comments? This is comments  
 5 first?  
 6 CHAIRMAN ANDERSON: One of you go.  
 7 MS. ROSSO: Okay.  
 8 CHAIRMAN ANDERSON: You have to come  
 9 up.  
 10 MS. ROSSO: Okay. I have to come up?  
 11 I've never been to one of these  
 12 meetings. It's very cold in here. It's very long.  
 13 MS. HERLIHY: We need your name and  
 14 your address.  
 15 MS. ROSSO: Okay.  
 16 That actually I have to read because I  
 17 wrote a bunch of stuff down. I didn't want to forget  
 18 anything.  
 19 My name is Helene Rosso.  
 20 I live 32 Susan Ave in Midland Park.  
 21 MS. HERLIHY: And you're going to give  
 22 comments. We need to swear you in.  
 23 You need to raise your right hand.  
 24 MS. ROSSO: Wait.  
 25 I have to -- okay.

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1 MS. HERLIHY: Because you're not just  
 2 asking questions; you're giving comments for the  
 3 board.  
 4 MS. ROSSO: I'm going to give comments,  
 5 yeah.  
 6 MS. HERLIHY: Do you swear that the  
 7 testimony you're about to give will be the truth, the  
 8 whole truth, and nothing but the truth?  
 9 MS. ROSSO: I do.  
 10 H E L E N E R O S S O,  
 11 32 Susan Avenue, Midland Park, New Jersey, having  
 12 been duly sworn, testifies as follows:  
 13 MS. HERLIHY: Thank you.  
 14 MS. ROSSO: Okay, bear with me.  
 15 My name is Helene Rosso. And I'm a  
 16 Midland Park resident for 17 years. I came here  
 17 tonight to show my support for Taco Bell -- for the  
 18 Taco Bell application.  
 19 I support it for multiple reasons, but  
 20 some more than others. Bear with me.  
 21 Ever since my kids started school 14  
 22 years ago, I have been an active member in our  
 23 community. I have served on many boards. I've  
 24 coached. I'm a Girl Scout leader and much more.  
 25 And I'm telling you this because I've

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1 dedicated the past 14 years to our community,  
 2 especially the children and those less fortunate.  
 3 If this application is approved, it  
 4 could open up 20 to 30 well-paying jobs for our  
 5 teenagers and other members in our community.  
 6 In this day and age, I don't see how we  
 7 would pass that up. Who knows when we'll get this  
 8 opportunity again.  
 9 Also, we have a lot of young families  
 10 in town with multiple children and both parents  
 11 working.  
 12 Our community is very active with  
 13 sports, Girl Scouts, Boy Scouts, theater, band and so  
 14 on. And parents sometimes need fast food, you know.  
 15 I mean, are we going to give it to our kids every  
 16 night? No. But Taco Bell has healthier options.  
 17 They do have vegetarian options. They have -- I  
 18 checked out the menu. They have gluten-free options.  
 19 They have options that Wendy's and Burger King don't  
 20 have, you know. It will give us parents another  
 21 option when we need that quick meal on the go.  
 22 I mean, I have a vegetarian in my  
 23 family, and a gluten-sensitive child, so I know what  
 24 that's like. Okay?

25 On Midland Park residents' Facebook  
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1 page -- I don't know if any of you are on it -- but  
 2 there are a lot of residents who are in support of  
 3 this.  
 4 But unless you come to a Zoning Board  
 5 meeting, there's no other way to express how you feel  
 6 unless on social media.  
 7 Earlier this week I had sent an e-mail  
 8 to Jessica, and I asked her to forward it to the  
 9 board.  
 10 She explained to me that she couldn't  
 11 do that, clearly. And I understood why. After I  
 12 read the explanation, it made sense, you know, so...  
 13 But, unfortunately, people work.  
 14 People are busy. These meetings are long. I had no  
 15 idea I would be here. I came straight from work.  
 16 You know, people are busy. They're running their  
 17 kids around. And this is a very common time for  
 18 other organizations to meet. I mean, I've had two  
 19 meetings this week already at 7 o'clock.  
 20 So there's conflicts that prohibit  
 21 people from attending.  
 22 So I'm just asking you when you make  
 23 your decision to please consider the community as a  
 24 whole, because there's lot of people in the community  
 25 that do want this, you know. I could show you my

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1 Facebook, you know, feed if you want.  
 2 But in look how long Friendly's stayed  
 3 unoccupied and vacant. It was an eyesore that we  
 4 passed for years, you know, so...  
 5 And as far as Burger King, I really --  
 6 that was -- I didn't -- I don't understand all that  
 7 stuff, but... And I don't know if the owner of  
 8 Burger King lives in town, or the attorney or not.  
 9 But how could they, like, come here and  
 10 tell us what's good for our community? It just seems  
 11 like they don't want the competition across the  
 12 street. I mean, really. It's apples and oranges.  
 13 They're two completely different things.  
 14 And, you know, so I just think that's  
 15 ridiculous that they have the audacity to tell us  
 16 what's good for our community.  
 17 And as far as the aesthetics of how  
 18 it's going to look on the street, I don't know if  
 19 anyone's seen a newer Taco Bell. They're actually  
 20 really nice. You know, the building is really nice.  
 21 It's better than, you know, having a building that's,  
 22 like, abandoned and not in use. They'll construct  
 23 the area, clean it up. I mean, that's the one big  
 24 thing. I'm a Girl Scout leader for 14 years. We try  
 25 to better our community, and literally by beautifying

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1 it, you know. That's what we do, make the world a  
 2 better place, you know.  
 3 And that's pretty much it. I want to  
 4 thank you for giving me -- oh, no. And I think that  
 5 is, like, the perfect location because that's where  
 6 all the other ones are.  
 7 So if I have to run to CVS to get a  
 8 pharm -- like, a scrip, I can go there, get dinner  
 9 and, you know, most of us are buying two or three  
 10 different things for our kids to eat, you know.  
 11 So I really do believe -- you know, I  
 12 hope you -- I hope you pass it.  
 13 I hope you vote yes for them because  
 14 who knows when we'll get another prospect that will  
 15 come and have the money to construct the area.  
 16 Thank you.  
 17 CHAIRMAN ANDERSON: Helene. Helene,  
 18 just so you understand what -- we're not -- we're not  
 19 here to decide whether this is a good idea or not.  
 20 MS. ROSSO: No.  
 21 I understand that.  
 22 CHAIRMAN ANDERSON: Taco Bell or  
 23 whatever. There is -- there is an ordinance.  
 24 MS. ROSSO: And I think you should let  
 25 that ordinance go out the window.

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1 CHAIRMAN ANDERSON: That's not up to  
 2 us.  
 3 MS. ROSSO: I know. I know. It's the  
 4 same thing with the 2 feet earlier. That's just how  
 5 I feel. You know, that's -- I understand there's an  
 6 ordinance. But I do also -- I mean, there was a  
 7 drive-through there prior, you know. So just because  
 8 it's food, what's the difference.  
 9 And as far as the safety, I disagree  
 10 with that. Because if you ever tried -- I'd rather  
 11 my kids walk there than try to cross over at the end  
 12 of Goffle and, you know, and Godwin so -- or  
 13 Prospect, I mean.  
 14 No, it's Godwin.  
 15 But anyway, yeah, no, I understand  
 16 that. I understand there's variances and that. I  
 17 guess that's why I'm asking, however you do it, you  
 18 make an exception.  
 19 CHAIRMAN ANDERSON: Well, there's  
 20 variances --  
 21 MS. ROSSO: There's ordinances.  
 22 CHAIRMAN ANDERSON: And there's  
 23 variances.  
 24 MS. ROSSO: Yeah.  
 25 CHAIRMAN ANDERSON: This is a use

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1 variance.  
 2 In other words, we have ordinances -- I  
 3 don't if you were here for the first application --  
 4 MS. ROSSO: Yeah.  
 5 CHAIRMAN ANDERSON: -- where they had a  
 6 front yard variance, whatever bulk variances.  
 7 MS. ROSSO: Right.  
 8 CHAIRMAN ANDERSON: It's a completely  
 9 different standard of proof for a use variance.  
 10 MS. ROSSO: Right.  
 11 CHAIRMAN ANDERSON: It's very -- it's  
 12 very difficult on the applicant to prove that they're  
 13 entitled to a use variance.  
 14 MS. ROSSO: I get it.  
 15 No, I understand your end, the legal  
 16 end.  
 17 But my end is, like, it's going to just  
 18 better our community.  
 19 CHAIRMAN ANDERSON: You'd like it.  
 20 MS. ROSSO: So I don't really, you  
 21 know.  
 22 CHAIRMAN ANDERSON: All right. Okay,  
 23 thank you.  
 24 Anybody else?  
 25 MS. ROSSO: Thank you.

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1 MR. ROSSO: Hello.  
 2 A. J. Rosso, 32 Susan Avenue. That was  
 3 my wife. So hand up.  
 4 MR. PLACIER: Tough act to follow.  
 5 MS. HERLIHY: Do you swear that the  
 6 testimony you're about to give will be the truth, the  
 7 whole truth, and nothing but the truth?  
 8 MR. ROSSO: I do.  
 9 A. J. R O S S O,  
 10 32 Susan Avenue, Midland Park, New Jersey, having  
 11 been duly sworn, testifies as follows:  
 12 MR. ROSSO: And that was my wife.  
 13 MS. HERLIHY: In my notes I'm going to  
 14 write Helene's husband.  
 15 MR. ROSSO: So please pass it, because  
 16 if you don't, I'm going -- that's okay so...  
 17 CHAIRMAN ANDERSON: But what about me.  
 18 Am I going to get egged?  
 19 MR. ROSSO: We'll talk about that --  
 20 we'll talk about that after.  
 21 This is the first time I've ever gone  
 22 to a meeting like this, and it won't be the last.  
 23 I'm a high school history teacher for  
 24 over 20 years. I thought that was stressful, right.  
 25 But now I look at it and it's like, okay, this

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1 happened in the past. How are we leaving now? Let's  
 2 speculate in the future. I'm never going to complain  
 3 about work again.  
 4 You know, it really is interesting to  
 5 see how this happens, this process that takes place.  
 6 And I get the process on your end. And you have to  
 7 hear our end, too. Because, like, hopefully we can  
 8 kind of work together. You speak for the community.  
 9 But it's difficult, like my wife said, people getting  
 10 here. You know, we have been listening to people on  
 11 Facebook and talking to people. And it is  
 12 overwhelmingly yes.  
 13 But, again, if they're not here, we get  
 14 it.  
 15 And I know it's difficult to be in this  
 16 position. And, hopefully, by listening to us say  
 17 we're in favor of it, for a multitude of reasons, it  
 18 could possibly help you make that decision inevitably  
 19 you'll make. You know, there's a lot of money for  
 20 the company to just get here, they've spent. And  
 21 these are the types of companies, I think, that can  
 22 afford to go in and put the money in and tear down  
 23 and build up and get rid of the abandoned building.  
 24 I don't think you're going to get other smaller  
 25 companies.

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<p style="text-align: right;">109</p> <p>1 You know, you need the bigger ones that</p> <p>2 have the money, that can pay the taxes. Not to</p> <p>3 mention the fact that they bring in jobs.</p> <p>4 And the one thing that really stood out</p> <p>5 is, like, that -- that options thing. And, you know,</p> <p>6 listening to what they were talking about with Burger</p> <p>7 King, like, it did kind of feel like that they were</p> <p>8 taking, like, a choice away.</p> <p>9 Like, it just seemed like -- I know</p> <p>10 there were all kinds of stuff that was going on</p> <p>11 there. But it just felt like they were saying they</p> <p>12 don't want to give us this choice because of the</p> <p>13 competition factor. You know, that makes sense, too.</p> <p>14 But, you know, in a capitalist system,</p> <p>15 a choice, like, it seemed to be like it was just them</p> <p>16 saying to us, we know what's better for you. It just</p> <p>17 didn't feel -- it didn't feel right. It didn't sit</p> <p>18 right.</p> <p>19 You know, and as far as the options</p> <p>20 thing, like, I remember driving my kids and their</p> <p>21 friends from one practice to another. You know,</p> <p>22 after 17 practices in two days and game after game</p> <p>23 and, yeah, this idea of having an option is reality.</p> <p>24 It's not every night. Of course it's not.</p> <p>25 But when you're really busy on the</p> <p style="text-align: center;"><b>LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.</b> <b>201-641-1812</b></p>	<p style="text-align: right;">111</p> <p>1 MS. ROSSO: Can I just make one more</p> <p>2 comment?</p> <p>3 CHAIRMAN ANDERSON: Sure.</p> <p>4 MS. ROSSO: Do I have to come back up?</p> <p>5 CHAIRMAN ANDERSON: Yes.</p> <p>6 MS. ROSSO: Maybe it's a comment -- a</p> <p>7 question. Isn't Starbucks a single drive-through</p> <p>8 lane? It is.</p> <p>9 MS. HERLIHY: I believe.</p> <p>10 MS. ROSSO: That's another thing.</p> <p>11 There was a lot of opposition with Dunkin' Donuts</p> <p>12 there. And I never see traffic. I pass it every</p> <p>13 day, you know.</p> <p>14 So I thought it was a single</p> <p>15 drive-through. I just wanted to double check that.</p> <p>16 MS. CIERI: I do have a question.</p> <p>17 Is that allowed?</p> <p>18 CHAIRMAN ANDERSON: Sure.</p> <p>19 Come on up.</p> <p>20 MS. CIERI: I'm just curious.</p> <p>21 MS. HERLIHY: You need to give your</p> <p>22 name and address.</p> <p>23 MS. CIERI: Nicole Cieri, 3 Hillside</p> <p>24 Avenue, Midland Park.</p> <p>25 I just have a quick question. I</p> <p style="text-align: center;"><b>LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.</b> <b>201-641-1812</b></p>
<p style="text-align: right;">110</p> <p>1 weekends, it would be nice to have that other option.</p> <p>2 And it's not taking away from the other ones that are</p> <p>3 there. I think it would just give us more options as</p> <p>4 a community.</p> <p>5 And, you know, like, if a company wants</p> <p>6 to invest in our town -- which I love our town, I do.</p> <p>7 I think we should -- we should let them do that.</p> <p>8 Again, I know on your end it's not that</p> <p>9 simple. But on our end, that's how we see it.</p> <p>10 And, you know, like, when I say our</p> <p>11 end, I'm talking about the over 100 people that we've</p> <p>12 seen and talked to and heard from that are saying the</p> <p>13 same thing that we're saying here tonight.</p> <p>14 But again, it's fascinating. And I</p> <p>15 don't know if they're all like this.</p> <p>16 But, you know, I'll be at the next one.</p> <p>17 I might not have anything to say, but I'll be at the</p> <p>18 next one. It's really interesting.</p> <p>19 So thank you. Thank you for what you</p> <p>20 do.</p> <p>21 CHAIRMAN ANDERSON: Thank you.</p> <p>22 Anybody else?</p> <p>23 (No Response.)</p> <p>24 CHAIRMAN ANDERSON: No?</p> <p>25 Going once?</p> <p style="text-align: center;"><b>LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.</b> <b>201-641-1812</b></p>	<p style="text-align: right;">112</p> <p>1 listened to both sides. I'm a little scared of him.</p> <p>2 I'll never go against him.</p> <p>3 So wasn't this really based on just</p> <p>4 opinion and no facts?</p> <p>5 So hearing and listening to both -- and</p> <p>6 it was very entertaining, it was -- I just felt like</p> <p>7 she was just giving all opinion and he was giving all</p> <p>8 facts.</p> <p>9 So I feel like if you can pass</p> <p>10 Starbucks, you should pass Taco Bell.</p> <p>11 CHAIRMAN ANDERSON: First of all, we</p> <p>12 will figure out what's facts and what's opinion.</p> <p>13 MS. CIERI: I just feel like it was a</p> <p>14 lot of --</p> <p>15 CHAIRMAN ANDERSON: But this is</p> <p>16 completely different than Starbucks.</p> <p>17 MS. HERLIHY: Starbucks was at the</p> <p>18 Planning Board, is my understanding, even though I</p> <p>19 was not here. Starbucks was at the Planning Board.</p> <p>20 So the difference is, when an</p> <p>21 application is -- Les described it earlier. There's</p> <p>22 different types of variances.</p> <p>23 Any business that wants to go in and</p> <p>24 anybody that wants to develop a particular property</p> <p>25 -- I'm going to give a little land use history, a</p> <p style="text-align: center;"><b>LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.</b> <b>201-641-1812</b></p>

1 little bit.  
2 Any business that wants to go in and  
3 develop a property needs what's called site plan  
4 approval. They've got to go in and they've got  
5 to show you where they're going to put their  
6 building, where they're going to put parking. And  
7 they may need variances. There's different types of  
8 variances.

9 There are what we call C variances,  
10 bulk variances. Like, too close to the side, too  
11 close to the front, too high. You know, those  
12 variances require certain proofs. And the Planning  
13 Board handles those. The Planning Board does site  
14 plan approval and C variances.

15 If the application needs what's called  
16 a use variance, that's a variance that's not --  
17 doesn't have to do with the size of the lot or the  
18 location of the structures, but it has to do with how  
19 the property is used, that's considered -- I'm not  
20 going to say it's a more important variance, but it's  
21 a different type of variance. It requires different  
22 proofs.

23 MS. CIERI: And Starbucks did not need  
24 that?

25 MS. HERLIHY: Did not need it.

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1 MS. HERLIHY: That ordinance came after  
2 that.

3 Many would tell you as result of that.  
4 So that Planning Board, this board,  
5 nobody had to deal with the fact that the  
6 drive-through wasn't -- a restaurant wasn't  
7 permitted.

8 So this is a new animal, so to speak,  
9 what we're dealing with.

10 MS. CIERI: Okay. Well, that being  
11 said, I do understand that. I'm just saying that  
12 looking at an abandoned building --

13 MS. HERLIHY: Understood.

14 MS. CIERI: -- and the value that it  
15 brings, and the jobs it offers to our college kids or  
16 our high school kids, brings so much more value than  
17 denying it.

18 And as far as the menu sign, and how  
19 bright it's going to be, and that it talks to you,  
20 they all do. I mean, I'm just...

21 MS. HERLIHY: And, for the record,  
22 those types of variances are C variances. There's a  
23 lesser standard. It's a tougher climb for the  
24 applicant.

25 MS. CIERI: I do understand that.

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1 Different proofs, but more proof, and also a  
2 different vote.

3 A C variance requires just a majority.  
4 If there are -- there's seven members of this board.  
5 So if all seven members are here, a C variance  
6 requires four out of -- four out of seven.

7 If five members show up on a particular  
8 night, it requires three out of five.

9 A use variance, like this applicant  
10 requires --

11 MS. CIERI: Requires everybody.

12 MS. HERLIHY: -- requires five  
13 affirmative votes.

14 So if seven people are here, they need  
15 five.

16 If five people are here, they need  
17 five.

18 So it's more difficult and just a bit  
19 more complicated to obtain. It's not impossible.

20 But just with everybody comparing  
21 Dunkin' Donuts went in, Starbucks went in. They were  
22 at the Planning Board. They didn't need the same  
23 type of variance. They didn't have the ordinance  
24 that prohibited drive-through restaurants.

25 MS. CIERI: Okay.

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1 But some of the information was a  
2 little bit, you know, silly.

3 CHAIRMAN ANDERSON: Okay.

4 Anybody else?

5 MR. USHERENKO: Hi.

6 My name is Stan Usherenko. I moved my  
7 family here. Two kids.

8 MS. HERLIHY: One second. Can you  
9 spell your last name.

10 MR. USHERENKO: U-S-H-E-R-E-N-K-O.

11 MS. HERLIHY: And your address.

12 MR. USHERENKO: 417 Prospect Street.

13 MS. HERLIHY: I need you to -- do you  
14 swear that the testimony you're about to give will be  
15 the truth, the whole truth, and nothing but the  
16 truth?

17 MR. USHERENKO: Absolutely.

18 S T A N U S H E R E N K O,

19 417 Prospect Street, Midland Park, New Jersey,  
20 having been duly sworn, testifies as follows:

21 MS. HERLIHY: Thank you.

22 MR. USHERENKO: So, yeah, I moved here  
23 during the height of COVID with my wife and two kids  
24 in 2020, end of May. We love the town.

25 So I know you have the ordinance.

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1 One question I do have is, are you not  
2 allowed to go against that ordinance even the Mayor  
3 -- or can exceptions be made?

4 MS. HERLIHY: So that's why they're  
5 here.

6 So when -- you're not -- you can't go  
7 -- you know, you can't violate an ordinance. You  
8 can't vary from an ordinance. You come here for  
9 looking for relief or permission to vary from the  
10 ordinance.

11 So the applicant has the burden of  
12 providing testimony and evidence to prove why they're  
13 while entitled to vary. And it's not -- it's not  
14 completely subjective. It's not just they need to  
15 convince us that it's a better idea -- I shouldn't  
16 say us. I don't vote. That they -- forgive me.  
17 That convince the board that it's a better idea than  
18 what the ordinance says. There's laws. There's --  
19 you know, there's a statute and there's case law that  
20 both Ms. Holmqvist and our planner have, you know,  
21 talked about that says the types of information that  
22 they have to provide, the types of proof they have to  
23 provide. They have to, kind of, check certain boxes  
24 in order to be entitled to the variance. It's really  
25 not just that everybody seems to think it's a good

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1 like it because everybody's in the drive-through. I  
2 go inside. There's no line.

3 So I'm happy. They're happy.

4 It's raining. And there's also  
5 families, they don't want to get out of the car. And  
6 it's actually not as safe for them to get out of the  
7 car, walk around the parking lot with their kids.

8 So, again, I think everybody's already  
9 said all the pros. Just the question is, how can we  
10 overturn that if it had to be overturned?

11 But I'm definitely for it obviously.

12 And thank you for your time.

13 I appreciate it.

14 MR. FORMICOLA: There's a Council  
15 meeting this Thursday.

16 MR. USHERENKO: Oh, is there?

17 MR. FORMICOLA: Go there.

18 CHAIRMAN ANDERSON: You're going to get  
19 in trouble, Rich.

20 VICE CHAIRMAN PAPAPIETRO: Eight  
21 o'clock, Thursday night, right here.

22 MR. FORMICOLA: Come on down.

23 MR. USHERENKO: I would love to hear  
24 more.

25 Thank you.

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1 idea. That's -- it's not that subjective.

2 MR. USHERENKO: I know it was passed in  
3 2021.

4 How can that be overturned if it had to  
5 be overturned?

6 MS. HERLIHY: That would be up to the  
7 Mayor and Council. They adopt ordinances.

8 MR. USHERENKO: So we're allowed to  
9 contact them if we need to?

10 I'm just curious what the rationale  
11 was. That goes opposite. Especially during COVID,  
12 it was a plus to go through a drive-through.

13 The fact that you're actually taking  
14 that option away from people is just surprising me,  
15 from a safety aspect.

16 Also, in terms of the parking lot, I  
17 think that's much safer because a lot of times I go  
18 through a drive-through, go through a main street.  
19 This is isolated in the corner. And that main  
20 crosswalk, it's not even going over.

21 So in terms of a safety thing, it's  
22 actually safer than most drive-throughs.

23 And again, options, like A. J. was  
24 saying, like, when I go to a drive-through, if I want  
25 to go out with my kids, park, go inside, I actually

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1 CHAIRMAN ANDERSON: All right.

2 Anybody else in the public have

3 anything to add?

4 (No Response.)

5 CHAIRMAN ANDERSON: Anything to tell  
6 us?

7 (No Response.)

8 CHAIRMAN ANDERSON: No?

9 Seeing no one, motion to close.

10 MR. DIVAK: So moved.

11 MR. FORMICOLA: Second.

12 MS. HARMON: Mr. Zuidema?

13 MR. ZUIDEMA: Yes.

14 MS. HARMON: Mr. Formicola?

15 MR. FORMICOLA: Yes.

16 MS. HARMON: Mr. Papapietro?

17 VICE CHAIRMAN PAPAPIETRO: Yes.

18 MS. HARMON: Mr. Placier?

19 MR. PLACIER: Yes.

20 MS. HARMON: Mr. Eliya?

21 MR. ELIYA: Yes.

22 MS. HARMON: Mr. Capalbo?

23 MR. CAPALBO: Yes.

24 MS. HARMON: Mr. Anderson?

25 CHAIRMAN ANDERSON: Yes.

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1 So next month we'll hear Mr. Whitaker's  
 2 summation.  
 3 MR. WHITAKER: We'll have seven.  
 4 CHAIRMAN ANDERSON: Seven people, yeah.  
 5 MR. WHITAKER: Everybody will be here.  
 6 CHAIRMAN ANDERSON: As far as we know.  
 7 MR. WHITAKER: If that were to change,  
 8 I'd just ask that Jessica tell me.  
 9 CHAIRMAN ANDERSON: We have -- well, we  
 10 should have nine, but we have eight.  
 11 MR. WHITAKER: Thank you very much for  
 12 your time this evening.  
 13 (Whereupon, this matter is continuing  
 14 at a future date. Time noted: 9:55 p.m.)  
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1 C E R T I F I C A T E  
 2  
 3 I, RONDA L. REINSTEIN, a Certified Court  
 4 Reporter of the State of New Jersey, authorized to  
 5 administer oaths pursuant to R.S.41:2-2, do hereby  
 6 certify that the foregoing is a true and accurate  
 7 transcript of the testimony as taken stenographically  
 8 by and before me at the time, place and on the date  
 9 herein before set forth, to the best of my ability.  
 10 I DO FURTHER CERTIFY that I am neither a  
 11 relative nor employee nor attorney nor counsel of any  
 12 of the parties to this action, and that I am neither  
 13 a relative nor employee of such attorney or counsel,  
 14 and that I am not financially interested in the  
 15 action.  
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 RONDA L. REINSTEIN, CCR No. 30X100217800

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